No. 90-1912

In the Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

CARLYLE W. HALL, JR., Counsel of Record
MARY LOUISE COHEN
ANN E. CARLSON
Hall & Phillips
10951 W. Pico Boulevard
Third Floor
Los Angeles, California 90064
Telephone: (213) 470-2001

BRENT N. RUSHFORTH
c/o Center for Law in the Public Interest
11835 W. Olympic Boulevard
Suite 1155
Los Angeles, California 90064
Telephone: (213) 470-3000

Attorneys for Petitioner
STEPHANIE NORDLINGER

Westside Law Publishers Los Angeles, California (213) 207-0272

QUESTIONS PRESENTED

Does California's ad valorem property tax system as modified by Proposition 13's welcome stranger provision violate the equal protection clause by taxing newly purchased property 10, 12, 15, 17 and even 583 times higher than like property owned by long-time owners, with no possibility of ever seasonably attaining a rough equality in tax treatment?

Does the harshly disproportionate tax burden Proposition 13 imposes on recent migrants and other newcomers impede the right to travel without a compelling state purpose?

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is reported at 225 Cal.App.3d 1259, 275 Cal.Rptr. 684, and is reprinted in the Appendix at A.

The California Supreme Court's unreported denial of review is reprinted in the Appendix at B.

JURISDICTION

The judgment of the California Court of Appeal was entered December 3, 1990. The timely petition for review of petitioner Stephanie Nordlinger was denied by the California Supreme Court on February 28, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

APPLICABILITY OF 28 U.S.C. § 2403(b)

28 U.S.C. § 2403(b) may be applicable to this case.

STATUTES/CONSTITUTIONAL PROVISIONS INVOLVED

1. Article XIII of the California Constitution provides:

> Sec. 1. Unless otherwise provided by this Constitution or the laws of the United States:
>
> (a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.
>
> (b) All property so assessed shall be taxed in proportion to its full value.

2. The full text of Article XIIIA of the California Constitution (popularly known as "Proposition 13") is set

forth in the Appendix at C. The relevant portion of the text includes the following:

> Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.
>
> Section 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.
>
> (b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

3. United States Constitution, Article XIV, Section 1 provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Page

CASES

STATUTES AND CONSTITUTIONAL PROVISIONS

ARTICLES

No. _____

In the Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

The petitioner Stephanie Nordlinger respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of the State of California, entered in the above-entitled proceedings on December 3, 1990 and for which review was denied by the California Supreme Court on February 28, 1991.

STATEMENT OF FACTS

A. Proposition 13's Operation.

California's Proposition 13, enacted by constitutional amendment in 1978, operates in most respects like a traditional current market value (ad valorem) property tax system. Under a traditional system, property is assessed for tax purposes at its current market value, and then a tax rate is applied to the assessment. If the property either increases or decreases in market value, the tax assessment is adjusted to reflect the change in value. Proposition 13 works in the same manner except that it places a cap on any *increases* in the assessment of real property until the property changes ownership or is newly constructed.

The system works as follows. Proposition 13, which is codified as Article XIIIA of the California Constitution, limits the maximum property tax rate to 1% of assessed value.[1] As in a current market value system, newly purchased or constructed property is assessed at its market value, which most typically is equal to its purchase price.[2] If property *declines* in market value below the initial assessment, Proposition 13 continues to operate identically to a traditional ad valorem system and the property is assessed downward to reflect its actual value. If, as has been more typical, the property *increases* in value, Proposition 13 departs from an ad valorem system by limiting any annual increase in the assessment to the lesser of 2% or the rate of inflation. Only

[1]Petitioner Nordlinger does not challenge the validity of the 1% tax rate cap, nor Proposition 13's other tax limitation provisions not relevant here. *See* Appendix C for full text. Proposition 13 allows the tax rate to exceed 1% only to pay for voter-approved indebtedness.

[2]Rather than assessing properties purchased prior to 1975 at their purchase value, Proposition 13 rolled back assessments for all these properties from their value in 1978 (when Proposition 13 was enacted) to their 1975-76 value. In all other respects, pre- and post-1975 property is treated the same.

upon the sale of the property is the assessment increased to reflect the actual value of the property. New construction also triggers a reassessment, but only of the newly constructed portion of the property.

This cap on assessment increases for already owned property, combined with the cap's removal upon sale of the property or new construction, is commonly referred to as a "welcome stranger" provision. The label reflects the fact that long-time property owners enjoy very low property taxes that typically reflect outdated, relatively low assessments, while newcomers to the neighborhood are saddled with a disproportionately high share of the tax burden.[3]

Under Proposition 13's welcome stranger scheme, because real estate appreciation throughout California has been so rapid, the tax disparities between new and long-time property owners have become especially extreme. In many parts of Los Angeles County, for example, new property owners pay property taxes commonly 10, 12, 15, 17 and as much as 583 times more than long-time owners[4] simply because they purchased their properties at different times.

[3]*See, e.g.*, Comment, *Hellerstein v. Assessor of the Town of Islip: A Response to Inequities in Real Property Assessments in New York*, 27 Syracuse L. Rev. 1045, 1061 (1976) (labelling a reassessment-on-transfer method of property taxation a "'welcome stranger' pattern") (citations omitted); "Justices Take Up Tax Issue That May Imperil Prop. 13," *Los Angeles Times*, Dec. 8, Part 1, at 12, col. 1 (labelling Webster County assessment scheme a "welcome stranger" method).

[4]The term "long-time property owners" is used throughout this petition to refer to property owners who have owned their property since at least 1975. Because Proposition 13 rolled back tax assessments in 1978 for all property purchased prior to 1975 to the fair market value assessment as of the 1975-76 tax year, any property owner who has owned his or her property continuously since 1975 enjoys the greatest savings under Proposition 13. The disparities to which petitioner refers throughout this petition are based on comparisons between tax assessments for property owners who have owned their property since 1975, and those who purchased their property fourteen years later in 1989, the year this action was filed. *See* note 6, *infra* for a description of the studies from which the disparities were drawn.

B. Stage in the Proceedings/Manner in Which the Federal Questions Were Raised Below.

Petitioner Nordlinger filed her complaint on September 18, 1989 in Los Angeles County Superior Court seeking a declaratory judgment that the welcome stranger assessment provisions of Proposition 13 violate the federal equal protection clause, as elaborated by this Court's January 1989 decision in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster Co., W. Va.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989). On October 25, 1989, after exhausting her administrative remedies as required under California law, petitioner Nordlinger amended her complaint to include a claim for refund of unconstitutionally collected property taxes. *See Nordlinger*, 225 Cal.App.3d at 1266-68, 275 Cal.Rptr. at 687-88.

Respondents Los Angeles County and its Assessor demurred to plaintiff's First Amended Complaint on November 16, 1989 on the ground that, even accepting petitioner's allegations as true, California's system of property taxation does not violate the federal constitution. *Id.* at 1267, 275 Cal.Rptr. at 688. Petitioner Nordlinger opposed the demurrer, and sought leave to amend her complaint to include additional factual allegations to support her claim, as supported by extensive studies of Los Angeles County tax disparities, and also sought to clarify certain of the legal allegations. *Id.*

(continued)

Approximately 46% of all houses in existence in 1975 remain in the same hands and thus retain a 1975-76 base year tax assessment (modified only by the 2% annual increase Proposition 13 allows). *See* "Joint Appendix In Lieu of Court Prepared Transcript" filed with District 2 of the California Court of Appeal in *Nordlinger v. Lynch*, 2 Civil BO48719 at Volume II, page 377 (hereafter "II J.A. 377"). Of course, Proposition 13's discriminatory system imposes disproportionate taxes on all relatively recent buyers, while all longer term owners enjoy relative benefits, but the discrimination is most vividly seen at the extremes and accordingly petitioner's studies focused on them.

On January 29, 1990 the superior court sustained respondents' demurrer without leave to amend on the ground that it was bound by the California Supreme Court's 1978 decision in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 239 (1978). *See* Appendix D (Minute Order of Los Angeles County Superior Court). The state supreme court in *Amador* had upheld Proposition 13 just after its passage against facial equal protection and right to travel challenges, long before the extreme disparities of the past twelve years had developed. The *Amador* decision was not appealed to this Court.

Petitioner Nordlinger then appealed the superior court decision to the California Court of Appeal, which sustained the ruling. *See Nordlinger*, 225 Cal.App.3d 1259, 275 Cal.Rptr. 684. Explicitly recognizing the "unfairness" caused by the welcome stranger approach, the court of appeal observed that "it is not reasonably disputable that article XIIIA has resulted in gross disparities in the assessments of properties with comparable market values . . . ." *Id.* at 1271, 1275, 275 Cal.Rptr. at 690, 693. Nevertheless, the intermediate appellate court reluctantly considered itself bound by the California Supreme Court's *Amador* decision: "Our duty as an intermediate appellate court is to follow the decisional law laid down by the state Supreme Court. We violate jurisdictional bounds when we do otherwise." *Id.* (citations omitted).

Petitioner Nordlinger petitioned the state supreme court for review of the court of appeal decision, and that petition was denied on February 28, 1991. *See* Appendix at B. On the same day, the California Supreme Court also denied the petition for review in a commercial entity's challenge to Proposition 13's assessment provisions. *R.H. Macy & Co., Inc. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530, *rev. den.* (1991). Macy's petitioned this Court for a writ of certiorari on April 15, 1991 (No. 90-1603).

C. Property Tax Assessment Disparities Resulting From Proposition 13's Operation.

After many years of saving, petitioner Stephanie Nordlinger in November 1988 purchased her first home, a small tract house in the very modest Baldwin Hills section of Los Angeles, for $170,000.[5] In 1975, while petitioner rented an apartment and saved for a down payment, other comparable Baldwin Hills houses were selling for about $32,000. If she had been financially able to enter the housing market and buy her house then, her property taxes under Proposition 13 would now cost her only $412 annually. Instead, because she could not purchase until late 1988, her property taxes in 1989 (her first full year of paying taxes on her home) totalled $1,700. *Nordlinger*, 225 Cal.App.3d at 1267, 275 Cal.Rptr. at 687.

During the first ten years of owning her new home, petitioner Nordlinger's property taxes will approach $19,000, while her neighbors who bought like homes in 1975 will pay only $4,500. Thus, solely because she did not (indeed could not) purchase her home until 1988, Nordlinger will pay fully $14,500 more in property taxes during the next decade than her neighbors, who live in comparable houses, receive the same public services and facilities, and make mortgage payments less than one-fifth of hers.

California's unfair welcome stranger tax scheme imposes even harsher and more discriminatory burdens on new home buyers in other Los Angeles neighborhoods. For example, a 1989 home buyer in Santa Monica (who was typical of many others in that and other rapidly appreciating neighborhoods) paid 1989 property taxes of $4,650, while his neighbors who bought comparable homes in the mid-1970s paid as little as $270 for the 1989 tax year. II J.A. 269, ¶ 32. The recent Santa Monica purchaser will thus pay the tax collector almost $51,000 during the next decade for

[5]The median home price in Los Angeles County at that time was approximately $225,000. II J.A. 257.

exactly the same public services and facilities that his neighbors who own virtually identical homes will get for the bargain price of $3,000—a difference of $48,000!

Such gross disparities are extremely common throughout Los Angeles County. In support of her proposed second amended complaint, petitioner Nordlinger presented extensive studies to the superior court, based largely on the Los Angeles County tax assessor's records, that documented these disparities.[6] The studies show, for example, that 1989 purchasers of homes in many neighborhoods in Los Angeles County, including much of the San Fernando Valley, the Pasadena area and western Los Angeles, commonly pay property taxes 12 times higher than long-time owners of comparable homes in the same neighborhoods. Recent buyers in other parts of Los Angeles County commonly pay taxes 8, 10, 12, 15 and 17 times higher than the taxes paid by long-time homeowners in the same neighborhood. *See Nordlinger*, 225 Cal.App.3d at 1268-69, 275 Cal.Rptr. at 688; I J.A. 109.

Moreover, these long-time property owners are holding assets of tremendous value, yet paying 1991 taxes based on outdated and highly favorable 1975 market prices and values.

[6]These studies, performed by economist David Gold, included a "County Cross-section Study" and a "Neighborhoods Study." Together, the studies analyzed more than 10,000 recent property sales. The County Cross-section Study analyzed by computer every property sale in Los Angeles County in the month of August 1989. For every sale, it calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment).

The Neighborhoods Study intensively researched particular neighborhoods. It compared the assessments on recent buyers and long-time owners of tightly comparable homes common in the neighborhood, recording the disparity levels seen repeatedly between these new and long-time owners. The Neighborhoods Study then cross-checked the computerized analysis of these neighborhoods with field visits by appraisal professionals. *See* I J.A. 106, II J.A. 366.

In contrast, new home buyers must pay taxes on the full current market value at a time when it is very difficult even to enter the housing market and to assume the large mortgage payments occasioned by these inflated prices. These new buyers typically purchase their homes because they need to move from other homes and apartments due to life changes such as marriage, divorce or a change in family size, not because they desire more luxurious accommodations. *See Nordlinger*, 225 Cal.App.3d at 1270, 275 Cal.Rptr. at 689.

As inflation has diluted the value of the dollar, Proposition 13's welcome stranger provision has delivered *annual real tax cuts* to long-time owners, (subsidized by newcomers), because inflation has generally far exceeded the 2% maximum annual upward adjustment allowed by Proposition 13. Thus, in Los Angeles, pre-1978 homeowners paid 61% more in real dollars on their first tax bills under Proposition 13 than they do today, and their taxes continue to fall. *See* I J.A. 155.

Extreme disparities in taxes paid by recent Los Angeles County purchasers of other types of properties are also common. By far the greatest disparities are on still-undeveloped lots, which are commonly 50:1 and more and even reach a staggering 583:1. Many such raw lots, considered unbuildable in 1975, are now ready for development as changes in zoning, accessibility and/or technology have made them worth hundreds of thousands of dollars. *See Nordlinger*, 225 Cal.App.3d at 1269, 275 Cal.Rptr. at 689; I J.A. 111, 112. Residential income (apartment) and commercial property tax disparities commonly range between 8:1 and 9:1, reaching as high as 11:1. I J.A. 113, 114. Pertinent tables and graphs summarizing disparities commonly found among residential and other properties in various Los Angeles County

neighborhoods presented in the exhibits below are included as Appendix E.

Glaring inequities among similarly situated property owners are not, by any means, confined to the same neighborhoods. For example, after only a dozen years of Proposition 13's operation, the long-time owner of a stately 7,800 square foot, seven-bedroom mansion on a huge lot in Beverly Hills (among the most luxurious homes in one of the most expensive neighborhoods in Los Angeles County), depicted in photograph A below, already pays *less* property tax annually than the new homeowner of a tiny 980 square foot home on a small lot more than a mile from the beach in an extremely modest neighborhood, depicted in photograph B below. II J.A. 402, 403.

PHOTOGRAPH A — BEVERLY HILLS HOME

PHOTOGRAPH B — VENICE HOME

Likewise, petitioner Nordlinger's 1988 property tax assessment on her very modest Baldwin Hills tract home is almost identical to that of a pre-1975 owner of a fabulous beach-front Malibu residential property worth $2.1 million, even though her property is worth only 1/12th as much as his. *Nordlinger*, 225 Cal.App.3d at 1268, 275 Cal.Rptr. at 688.

These dramatic inequities will soon grow even worse. Even if the appreciation rate of Southern California real estate permanently plunges to the level of the most conservative investments, residential disparities greater than 26:1 will be commonplace within ten years. *Id.* at 1269, 275 Cal.Rptr. at 689. If, instead, property continues to appreciate at the rate it has since the Proposition 13 baseline year of 1975, continuing the pattern of boom and lull that has occurred during that time, within ten years many new home buyers will be paying 70 to 80 times the taxes of their stay-put neighbors. I J.A. 130, 131.

Ironically, the greatest beneficiaries of this system are the wealthy. They enjoy not only the largest *absolute* savings, but also the largest *relative* savings because market value appreciation has been far greater in the wealthy communities of Los Angeles County than in the poor communities, as the graphs set out in Appendix E show. Thus, long-time homeowners in Beverly Hills, where properties have appreciated by 1600%, pay an effective tax rate of as little as 1/12th of 1% of the present value of their homes, while comparable long-time owners in Watts, where the appreciation rate has been only 600%, pay a rate more than twice as high, at 1/5th of 1% of their homes' value. Indeed, under Proposition 13's harshly discriminatory provisions, recent home buyers who can afford only tiny bungalows in Los Angeles County's most crime-ridden and depressed areas of Watts and Compton commonly pay as much in property taxes as owners of spacious $1 million homes in the wealthy sections of Santa Monica, Pacific Palisades and Beverly Hills who purchased fourteen years ago and earlier. Although the Watts bungalows are worth a fraction of the coastal properties and the Watts residents are far less able to pay than their wealthier counterparts, their property taxes are the same. I J.A. 109, 128, 141, 151-52, 178-81.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT'S 1989 *ALLEGHENY* DECISION EXPLICITLY RECOGNIZED THE POTENTIAL CONSTITUTIONAL INFIRMITIES OF PROPOSITION 13'S WELCOME STRANGER PROVISION, BUT LEFT OPEN THE IMPORTANT FEDERAL QUESTION OF WHETHER A LEGISLATIVELY ENACTED SYSTEM THAT GROSSLY DISCRIMINATES AGAINST NEW PROPERTY OWNERS IS VALID.

In 1989, this Court struck down a Webster County, West Virginia property tax scheme that operated almost identically

to Proposition 13. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster Co., W. Va.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989). In so holding, the Court expressly recognized that its ruling casts doubt on the validity of California's method. The Court, however, left open the question of whether the fact that California has enacted such a tax scheme generally, on a statewide basis, rather than as the "aberrational" policy of one county assessor, saves Proposition 13 from constitutional defect. The Court stated:

> We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIIIA of its Constitution, popularly known as "Proposition 13."

Allegheny, 488 U.S. at 344 n.4, 109 S.Ct. at 638 n.4.

In practice, California's Proposition 13 works almost identically to the unconstitutional Webster County property tax scheme. As in California, the Webster County assessor based assessments on the fair market value of the property as of the most recent date of purchase. Additionally, every two or three years, the assessor increased by as much as 10% the assessed value of parcels that had not changed hands, a slightly greater increase than the 2% annual adjustment Proposition 13 allows. Just as in California, the Webster County reassessments never came close to approximating the actual market value of the property, until a change of ownership triggered a reassessment. *Id.* at 338, 109 S.Ct. at 635. This West Virginia tax assessment scheme resulted in dramatic tax differences between properties based simply on the date the parcels were purchased, with Webster County disparities commonly in the range of 8:1 and ranging as high as 20:1 and 35:1. *Id.* at 341, 109 S.Ct. at 637. As described above, Proposition 13 has resulted in similar but more extreme tax disparities.

The West Virginia Supreme Court upheld the Webster County practice when it was challenged as a violation of state law.[7] This Court found, however, that the welcome stranger scheme violated the federal equal protection clause by failing to achieve "the seasonable attainment of a rough equality in the tax treatment of similarly situated property owners." *Id.* at 343, 109 S.Ct. at 638.

The only difference between the Webster County, West Virginia and California property tax schemes is that West Virginia's state constitution mandates a current market value system, within which the Webster County assessor *administratively imposed* a "welcome stranger" assessment method, *see id.* at 338, 109 S.Ct. at 635, whereas California's constitution mandates a current market value system with a *legislatively imposed* "welcome stranger" provision.

The important federal question presented by this case is whether the distinction between California's and West Virginia's scheme of taxation has constitutional significance. In other words, can a state, consistent with the federal equal protection clause, use a current market value system with a *legislatively imposed* cap on increases in assessments for already owned property, when the federal constitution prohibits a local assessor from *administratively imposing* a cap that works in the very same manner?

A. This Court Found That Webster County's Welcome Stranger Provision Discriminates Against Taxpayers in the Same Class Who Must Receive Equal Tax Treatment.

In evaluating whether Webster County's welcome stranger provision violated the equal protection rights of those

---

[7] *See In re Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560, *rev'd on other grounds, Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336, 109 S.Ct. 633 (1989).

property owners who were taxed at the full market value of their property, this Court discussed the different judicial tests used to measure a property tax scheme's constitutionality, depending upon the nature of the property tax system at issue. If a state has categorized taxpayers differently so that, for example, corporations pay a 2% tax rate and homeowners pay a 1% rate, as long as a suspect classification or fundamental right is not involved, the classification will be sustained if the "divisions and burdens are reasonable."[8] *Allegheny*, 488 U.S. at 344, 109 S.Ct. at 638; *see Lenhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) (upholding Illinois *ad valorem* tax on personalty of corporations even though individuals were exempt).

If, conversely, a state has established a uniform system that treats all taxpayers in the same manner, *i.e.*, that applies the same tax rate and method of establishing assessed value to all taxpayers, then the state must "seasonabl[y] attain[ ] . . . a rough equality in the tax treatment of similarly situated property owners." *Allegheny*, 488 U.S. at 343, 109 S.Ct. at 638. Put another way, "intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." *Id.* at 345, 109 S.Ct. at 639.[9]

This Court rejected the Webster County assessor's attempt to justify as rationally based the use of a welcome stranger method of taxation, holding that the Webster County assessor

---

[8]For a discussion of the heightened level of scrutiny to which Proposition 13 should be subject because it interferes with the fundamental right to travel, see Section II at 27, *infra*.

[9]*See also Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-53, 38 S.Ct. 495, 496, 62 L.Ed. 1154 (1918); *Sioux City Bridge v. Dakota County*, 260 U.S. 441, 445-46, 43 S.Ct. 190, 191-92, 67 L.Ed. 340 (1923); *Cumberland Coal Co. v. Board of Tax Revision of Tax Assessments in Greene County, Pa.*, 284 U.S. 23, 28-29, 52 S.Ct. 48, 50-51, 76 L.Ed. 146 (1931).

subjected properties within the *same* class to widely different taxes solely because of when each property was purchased. *Id.* at 343-45, 109 S.Ct. at 637-38. Where only one class of taxpayers is established, the Court held, the equal protection clause requires that taxpayers within that class receive roughly equal treatment, an equality the Webster County assessor failed to attain seasonably.

B. Because the Distinctions Between Proposition 13 and the Webster County Taxation Method Have No Constitutional Significance, California Must Seasonably Achieve a Rough Equality in Tax Treatment of Like Properties.

In practice, California's Proposition 13 and Webster County's method of taxation work in a nearly identical manner. Two possible differences between the two schemes have been alluded to. The court of appeal decision here relied on the California Supreme Court's earlier *Amador* opinion to suggest that there is a *substantive* difference between the two systems—California has adopted a so-called "acquisition value" scheme, whereas Webster County operated under West Virginia's traditional current market value system. *See Nordlinger*, 225 Cal.App.3d at 1278, 275 Cal.Rptr. at 695. Similarly, this Court in *Allegheny* noted a *procedural* difference between the two methods of taxation—namely that California enacted its welcome stranger provision legislatively, through a statewide vote, rather than administratively, as in Webster County. 488 U.S. at 244 n.4, 109S.Ct. at 638 n.4. As discussed below, there is no substantive difference between the two property tax schemes, and the procedural difference has no constitutional significance.

1. There Is No Substantive Distinction Between the Webster County and California Property Tax Systems.

Despite the stark parallels between the Webster County and California property tax systems, the court of appeal below concluded that it was bound by the 1978 California Supreme

Court's *Amador* decision that had upheld Proposition 13's welcome stranger provision against a facial attack just after its enactment.[10] Recognizing its role as an intermediate court of review, the court of appeal explained:

> [I]t is the function of the California Supreme Court, rather "than of any state court subordinate to it, to announce changes in what has hitherto been treated within the state as the settled law with respect to constitutionality [under the United States Constitution] of a given application of a state statute, *unless indeed there be so exact a parallel between a particular case presented and a controlling decision of a federal court*, that no reasonable distinction between them can be made."

Nordlinger, 225 Cal.App. at 1275, 275 Cal.Rptr. at 693 (emphasis in original). As the "reasonable distinction" compelling it to follow *Amador*, the court of appeal noted that this Court in *Allegheny* had characterized the West Virginia Constitution as mandating a *current market value* tax assessment system, whereas the state supreme court's *Amador* decision had characterized Proposition 13 as implementing a new *acquisition value* system. *Nordlinger*, 225 Cal.App.3d at 1278, 275 Cal.Rptr. at 695. Because California had adopted a "new assessment method based on "acquistion value," the intermediate court found *Allegheny* inapposite, It relied instead on the *Amador* finding that as

[10]The *Amador* Court decided the constitutionality of the welcome stranger provision in the context of a sweeping facial challenge, where the equal protection challenge was apparently little more than an afterthought. The petitioners' brief focused on numerous other questions of state constitutional law, relegating the equal protection challenge to only three and one half pages as part of an Appendix to the main brief and relying on hypothetical disparities assumed to exist as of 1978. *See* Petitioners' Points and Authorities in Support of Petition for Extraordinary Relief in the Nature of Mandamus, filed June 9, 1978, California Supreme Court, in the case of *Amador Valley Joint Union High School District* v. *State Board of Equalization*, Appendix B at 106-09.

long as California can advance an "arguably reasonable basis" for Proposition 13, it will pass constitutional muster. *Id.* at 1272, 275 Cal.Rptr. at 69.

Using the euphemistic "acquisition value system" label to describe California's property tax system completely ignores the fact that California's system, like Webster County's, continues to be a traditional current market value property tax system with a welcome stranger provision simply grafted onto it. Article 13 of the California Constitution states that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." *See* Cal. Const. art. XIII, § 1(a) (West Supp. 1991). California's assessment provision is nearly identical to that imposed by the West Virginia Constitution, which "establishes a general principle of uniform taxation so that all property, both real and personal, shall be taxed in proportion to its value." *Allegheny*, 488 U.S. at 338, 109 S.Ct. at 634. Indeed, California still uses a current market value system in all instances *except* when long-time property owners would otherwise experience a tax increase. Thus Proposition 13 uses current market value as the measuring stick for establishing a newly purchased property's initial tax assessment[11]; it uses current market value if the property declines in value; and it uses current market value to assess new construction. The *Amador* court in 1978 recognized that Proposition 13 creates a uniform system of taxation that treats all taxpayers in "precisely the same manner." *Amador*, 22 Cal.3d at 235, 149 Cal.Rptr. at 251. *See also State Board of Equalization v. Bd. of Supervisors*, 105 Cal.App.3d 813, 164 Cal.Rptr. 739 (1980) (Proposition 13 is only a limit on the pre-existing fair market value system, not a new system).

In actuality, only when current market value works to the detriment of long-time property owners (*i.e.*, when their tax assessments will rise) is its usage in California abandoned through the welcome stranger overlay. The Webster County

[11]For property purchased prior to 1975, its value is assessed as of the 1975-1976 tax year. *See* note 2, *supra*.

method operated in precisely the same way. The assessor used current market value as the measuring stick to assess property in all instances *except* when already owned property increased in value. There is no substantive distinction between the way in which the Webster County and Proposition 13 welcome stranger provisions operate.

Because California and the Webster County assessor used the same type of property tax assessment systems, Proposition 13 must be measured by *Allegheny*'s "rough equality" standard, unless a possible procedural distinction alluded to by this Court—the manner in which the welcome stranger provision was grafted onto the current market value system—saves it from challenge.

2. The Fact That California Legislatively Adopted Its Statewide Welcome Stranger Provision Whereas Webster County Imposed Its Welcome Stranger Provision Administratively Makes No Constitutional Difference.

California's legislative adoption of its welcome stranger provision by statewide vote should not insulate it from complying with the equal protection clause. If the federal equal protection clause prohibits Webster County's assessor from administratively grafting a welcome stranger provision onto its current market value system, then so should California be prohibited from taking the same action legislatively. Indeed, in many respects, California's legislatively enacted provision is more, not less, constitutionally offensive than Webster County's administratively enacted provision.

Webster County's assessor used a property's purchase price to assess its taxable value, and then periodically reassessed parcels that had not changed hands recently by as much as 10% every several years in an attempt to tax properties "based on some perception of the general change in area property

values." *Allegheny*, 488 U.S. at 343, 109 S.Ct. at 637. Although the assessor never came close to taxing owners of comparable properties equally (indeed this Court noted that, if left untouched, the assessment method would result in owners of comparable parcels paying equal property taxes only after 500 years of adjustment, 488 U.S. at 341-42, 109 S.Ct. at 637), at least the assessor possessed the administrative discretion to achieve equal treatment.

In California, by contrast, an assessor has no discretion at all to equalize property taxes; he or she may increase the assessed value of property that has not changed hands by only 2% annually. Because real estate appreciation after Proposition 13's enactment has far outpaced this minimal 2% annual increase, the assessed value of property held since 1975 does not, and will likely never, come close to the assessed value of recently purchased comparable property assessed at its actual market value. California's assessors can do nothing about the gross disparities this system has created to date and will create even more dramatically over time; the state constitution has tied their hands. In Webster County, it may have taken 500 years to equalize property taxes, but in California, where the welcome stranger provision is for all practical purposes etched into stone in the state constitution, property taxes will never be equalized.[12]

---

[12]Nor is Proposition 13 likely to be overturned by a subsequent vote of the people. At least 46% of all homes existing in 1975 have not changed hands, and thus retain their extremely low property tax assessments. Furthermore, the California voters have been carving loopholes from the reassessment-upon-transfer provision that are designed to insulate longtimers from the harshness of the welcome stranger provision's impacts. For example, parents may transfer property valued at up to $1 million to their children without a reassessment, thereby guaranteeing that some California property will retain assessments based on 1975 values for generations to come. *See* art. XIII A § 2(h); Cal. Rev. & Tax. Code § 63.1 (West Supp. 1991). Similarly, taxpayers 55 years or older may sell their homes and purchase new ones of equal or lesser value and retain their old property tax assessments. *See* art. XIII A § 2(a), Cal. Rev. & Tax. Code § 69.5

The fact that the people of California voted to impose a welcome stranger provision on themselves should also make no federal constitutional difference. As this Court has long recognized, "it is plain that the electorate as a whole, whether by referendum or otherwise, could not order . . . action violative of the Equal Protection Clause." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 448, 105 S.Ct. 3249, 3259, 87 L.Ed.2d 313 (1985); *see also Sunday Lake Iron Co. v. Wakefield*, 247 U.S. at 352, 38 S.Ct. at 495, 62 L.Ed. 1154 (1918) (the equal protection clause serves "to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, *whether occasioned by express terms of a statute or by its improper execution through duly constituted agents*") (emphasis supplied). Indeed, the self-serving nature of Proposition 13's welcome stranger provision makes the voters' motives particularly suspect. Not accidentally, Proposition 13 imposes very low taxes on those individuals fortunate enough to have owned California property at the time of its enactment, while forcing newcomers—including those too young to vote in 1978, those who could not afford to own property, and new migrants

(West Supp. 1991). Thus, like those who have owned property continuously since 1975, those property taxpayers who fit into the new exceptions have an interest in retaining the present system. Finally, by its very nature Proposition 13 is virtually guaranteed political immortality: at any given moment, at least 50% of property owners are its beneficiaries, who pay artificially low taxes while their newer neighbors pay a vastly disproportionate share. The court of appeal below specifically recognized this reality, noting that "It is questionable . . . whether a majority of the electorate ever will be sufficiently aggrieved to repeal article XIIIA's . . . assessment method." *Nordlinger*, 225 Cal.App.3d at 1282 n.11, 275 Cal.Rptr. at 698 n.11.

to the state—to pay 10, 15, 17 and even 583 times the taxes paid by the longtimers.[13]

Additionally, the procedural appropriateness of the manner by which the welcome stranger provision was grafted onto the current market value system in Webster County and in California, respectively, was, and is not, a part of this Court's federal question inquiry. In *Allegheny*, the West Virginia Supreme Court concluded that the petitioners' challenge to the Webster County assessor's welcome stranger administrative practice did not state a cause of action under West Virginia state law. *In re Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d at 560. Similarly, the California Supreme Court has determined that the voters acted within their state constitutional authority when they enacted Proposition 13. *Amador*, 22 Cal.3d at 229, 232, 149 Cal.Rptr. at 247, 250 (Proposition 13 did not violate the "single subject" or "constitutional revision" limitations on statewide ballot measures). In both cases, state law issues relating to the means by which the welcome stranger provision was promulgated are not properly this Court's concern in conducting its analysis.[14] The form or mode of promulgation—administra-

[13]Notably, the Webster County welcome stranger provision, although administratively imposed, was indirectly endorsed by a vote of the people: the assessor is elected by popular vote every four years and the policy continued over multiple elective terms. *See* W. Va. St. § 3-1-17 (West 1991); *Allegheny*, 488 U.S. at 344, 109 S.Ct. at 638 (noting that property tax disparities caused by the welcome stranger scheme "have continued for more than 10 years with no changes").

[14]As a matter of administrative law, courts have traditionally viewed statewide legislative bodies as having somewhat greater authority to establish policy and make policy distinctions than do state or local administrative officials. *See State Board of Equalization*, 105 Cal.App.3d at 819, 820, 164 Cal.Rptr. at 743. As a matter of state administrative law, therefore, the West Virginia or California appellate courts ordinarily might be somewhat more willing to allow the operation of their current market value systems to be altered legislatively through the addition of a welcome stranger assessment cap than administratively. This is a state law issue, however, and, in fact, both state appellate courts upheld their respective welcome stranger modifications under state law.

tive in one instance, legislative in the other—was concededly within the scope of the authority granted by state law, and consequently should not have federal constitutional significance.

Given that this Court has found unconstitutional a property tax scheme that in practice operates identically to California's and has no constitutionally significant procedural distinctions, California's scheme should also logically be found unconstitutional, unless the state can advance some very compelling justifications for its scheme. Yet neither the state, the California courts, nor the original sponsors of Proposition 13 have ever justified the gross disparities that California's welcome stranger provision imposes on new home buyers and frequent movers.

3. Proposition 13's Grossly Discriminatory Reassessment-on-Transfer Provision Cannot Be Justified on Any Grounds.

No legitimate public policy rationale explains why one California resident must pay tens of thousands of dollars more in taxes over a decade than his or her next-door neighbors who live in nearly identical homes and who receive the same public services and facilities. Nor can the welcome stranger provision's proponents justify why a California family that is forced to move from one part of the state to another sees its property taxes multiply by a factor of ten or more, even though it buys a home comparable to or even smaller than the family's old one. Indeed, if Proposition 13 had stated openly that the effect of its operation would be that properties purchased in 1975 would be subject to a tax rate of only 1/17th of 1%, while equally valuable properties purchased fourteen years later would be taxed at the full 1% rate, the unfair discrimination and the resulting equal protection violation would be blatant and obvious. No one would even *attempt* to justify such

discrimination.[15] That the patently discriminatory effects of Proposition 13 are masked by being set forth in the *reassessment* provisions of the statute rather than in its *tax rate* provisions does not make the discrimination any more justifiable. *See City of Rancho Cucamonga v. Mackzum*, 228 Cal.App.3d 929, 279 Cal.Rptr. 220, 227 (1991) ("'Inequality of taxation is produced as surely by inequality of valuation as by inequality of the rate of tax.'") (citations omitted).

The 1978 *Amador* decision cited several theoretical arguments to justify Proposition 13, including tax limitation, avoiding taxes on "paper profits," and promoting certainty and predictability. 22 Cal.3d at 235, 149 Cal.Rptr. at 251. These *Amador* arguments, however, logically support only Proposition 13's 1% limit on taxes (not at issue here) and its rollback to 1975 assessment levels adjustable up to 2% annually. They in no way explain or support Proposition 13's reassessment-on-transfer provision and its resulting huge disparities.

Proposition 13 could have attained the three articulated benefits *and still fully avoided these huge disparities* had it been enacted without the reassessment-on-transfer provision. For example, Proposition 13 could have assessed and taxed new buyers at the same 1975 base levels (adjusted 2% annually) that their predecessors and other existing owners enjoy. Under such a tax system, all property taxpayers would equally obtain the three identified tax benefits that Proposition 13 ostensibly promotes. Without the reassessment-on-transfer provision, however, Proposition 13 would have bankrupted local government in the long run, because it would have granted to everyone the same annual tax cuts (in inflation-adjusted terms) that the welcome stranger provision gives only to longtimers. The groups organized by the authors of

---

[15]Even if this Court were to determine that a rational basis test rather than the *Allegheny* "rough equality" test should apply to the measure's constitutionality, the state has not provided a rational justification for Proposition 13's discrimination.

Proposition 13, the Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee, expressly conceded this in their amicus curiae brief filed in this case in the state court of appeal. Such a result, however, would admittedly have been fiscally irresponsible. Proposition 13's draftsmen thus acknowledged that they created the welcome stranger provision for one purpose only: to provide "ever increasing property tax revenues to local governments."[16] But this justification could be used to support any discriminatory tax since all taxes raise revenues.[17]

The *Amador* court also suggested that the welcome stranger provision is justifiable because it is somehow related to a taxpayer's ability to pay. 22 Cal.3d at 235, 149 Cal.Rptr. at 251. This suggestion, however, is wholly belied by the disparities that have subsequently developed during the past dozen years. By including reassessment provisions that rely on value as of time of purchase (with the paltry 2% annual adjustment) to assess taxes year in and year out, Proposition 13's welcome stranger provision over time completely destroys any relationship whatsoever between a taxpayer's property

[16]Amicus Curiae Brief of Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee in Support of Respondents, filed in District 2 of the California Court of Appeal in *Nordlinger v. Lynch*, 2 Civil BO48719, at 4, 7-8.

[17]Notably, the posited goal of providing minimally adequate levels of tax funding for local government, while still obtaining the benefits of predictability and tax limitation, could easily be achieved while utilizing any of several fair, even-handed schemes that do not harshly discriminate against newcomers. For example, each county could reassess all property up to its current market value and then lower the overall tax rate, while still raising the same amount of revenue. Under this "revenue neutral" scheme, all taxpayers would pay the same reduced tax rate on the market value of their properties. In Los Angeles County, the across-the-board residential tax rate would be immediately lowered to 0.44%. *See Nordlinger*, 225 Cal.App.3d at 1269 n.4, 275 Cal.Rptr. at 689 n.4. Alternatively, the state could apply Proposition 13's 1% tax rate to the current market value of all property (with reassessments seasonably performed), but simply defer collection of the taxes imposed on the increase in market value until the property is sold or transferred.

taxes and his or her ability to pay. The houses pictured on pages 9-10, *supra*, vividly demonstrate the complete absence of any present link between the value of a house as of its purchase date and the ability of its owners to pay the taxes based on that value. If the state is actually concerned with ability to pay as a basis for creating discriminatory classifications, it properly should use a measure with some demonstrable link to present ability to pay, such as income level or disability, not a time-based measure that over time utterly destroys any once arguably valid link.[18]

Until the amicus brief by the Jarvis and Gann committees was filed in the state court of appeal in this case, the true policy underlying the reassessment-on-transfer provision had never been so starkly articulated. The welcome stranger scheme was designed solely to ensure that the totality of the increase in revenues necessary to finance local government (beyond a paltry 2%) would come from newcomers, movers, first-time home buyers and all others recently entering the housing market. Compounding this blatantly inequitable tax scheme, Proposition 13 forces these newcomers not only to fund entirely the steadily growing local government tax base, but also to provide tidy annual subsidies to the oldtimers—allowing existing property owners, in effect, to obtain yearly tax cuts measured by the difference between the actual rate of inflation and the 2% annual increase.

[18]California has programs in place to protect property owners who truly lack the ability to pay their property taxes. Property tax assistance is available to taxpayers whose household income is less than $20,000, *see* Cal. Rev. & Tax. Code 20514 (West Supp. 1991), while a postponement of property taxes is offered to all taxpayers who are at least 62 years old, blind or disabled and have household incomes of $24,000 or less. *See* Cal. Rev. & Tax. Code § 20585 (West Supp. 1991).

C. Proposition 13's Welcome Stranger Provision Fails Woefully to Achieve, Seasonably or Ever, a Rough Equality in the Tax Treatment of Comparable Property.

As should be abundantly clear from the above discussion, California uses a method of property taxation that not only operates in a nearly identical manner to the unconstitutional Webster County scheme, but produces even worse discriminatory results. The California Court of Appeal in this case specifically acknowledged that "a revisiting of [the California Supreme Court's] *Amador* [decision upholding Proposition 13] may be appropriate" given the huge disparities and resulting unfairness that have developed in the intervening twelve years, but the court of appeal determined that it lacked the institutional power to do so. *Nordlinger*, 225 Cal.App. at 1275, 275 Cal.Rptr. at 693. By denying review, the California Supreme Court avoided the politically sensitive question of reconsidering the constitutionality of Proposition 13. No court, therefore, has determined in the face of these massive inequities whether California's present reassessment-on-transfer practices intentionally and systematically violate the equal protection rights of millions of its property taxpayers.

This Court realized the importance of the federal question involved when a single West Virginia county assessor was discriminating against a relative handful of recent property purchasers by administratively imposing a welcome stranger scheme of taxation. The Court should now resolve the even more compelling federal question of whether California can discriminate against millions of its property owners by legislatively imposing the very same method of taxation.

II.

THIS COURT'S CONSISTENT REJECTION OF STATE STATUTES THAT BASE EVEN THE MOST MINIMAL GOVERNMENTAL BENEFITS ON DATE OF RESIDENCY RAISES THE IMPORTANT FEDERAL QUESTION OF WHETHER THE ENORMOUSLY DISPROPORTIONATE BURDEN ON NEWCOMERS CAUSED BY CALIFORNIA'S REASSESSMENT—UPON—TRANSFER PROVISION VIOLATES THE RIGHT TO TRAVEL.

Every time in the last decade that this Court has examined statutes classifying individuals on the basis of timing or length of state residence in order to distribute governmental benefits or burdens, it has invalidated the statutes. *See Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986) (invalidating a civil service preference provided only for veterans who resided in New York at the time they entered the military); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985) (striking down a property tax exemption only for Vietnam veterans who resided in New Mexico prior to May, 1976); *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982) (declaring unconstitutional Alaska's method for distributing its oil revenues based on the number of years a citizen resided in state). It has done so either because the classification impeded the right to migrate, or because the state could not provide sufficient justification to meet an invigorated rational basis test.

California's welcome stranger provision imposes far greater burdens on newcomers than do any of the statutes struck down in *Zobel*, *Hooper*, and *Soto-Lopez*. For many new California residents, the disproportionate burden imposed by Proposition 13's reassessment-on-transfer provision totals thousands of dollars per year. By contrast, the veterans'

property tax preference struck down in *Hooper* was worth approximately $40 per year. 472 U.S. at 614, 105 S.Ct. at 2864.[19] Moreover, the statutes in *Hooper*, *Zobel*, and *Soto-Lopez* each involved benefits, not burdens.

When invalidating statutes that use the timing or length of state residence to distribute government benefits or burdens, this Court's underlying concern has been the selfish incentive for a state to "take care of 'its own'. . . ." *Hooper*, 472 U.S. at 623, 105 S.Ct. at 2868. This tendency undermines one of the most fundamental, longstanding principles of the federal constitution—to promote our federalist system through free migration to and from the various states. The Court has stressed time and again "the unquestioned historic acceptance" of principles of free migration. *Soto-Lopez*, 476 U.S. at 902, 106 S.Ct. at 2320.

The court of appeal below erroneously concluded that, because it was theoretically possible for people to be long-time California homeowners before they move to California, no impermissible burden on the right to travel exists. *Nordlinger*, 225 Cal.App.3d at 1281, 275 Cal.Rptr. at 697. But very few of us can afford to own a home we don't live in, and virtually no new migrants arrive in California as long-time California homeowners. American citizens desiring to move to California must either give up the American dream of owning a home, or must accept the grossly disproportionate tax burden imposed by the reassessment-on-transfer provision of Proposition 13. They can never gain entry into the most favored group of pre-1975 owners and their heirs. For these reasons, date of home ownership is far too close a proxy for date of residency to allow such enormously disproportionate burdens to stand.

Zobel makes clear that the court of appeal reasoning below was incorrect. In *Zobel*, Alaska apportioned its oil revenues

[19] Assuming a 2% tax rate on the $2,000 property tax exemption.

to residents in proportion to the length of time they had been there since 1959, *see* 457 U.S. at 57, 102 S.Ct. at 2311, just as California now apportions its property tax burdens in proportion to the length of time an owner has owned California property since 1975. A resident of Alaska received a $50 dividend for each year he or she had resided in state since 1959. *Id.* Noting that the Alaska scheme "creates fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state," the Court invalidated the statute. *Id.* at 59, 102 S.Ct. at 2312. The Court pointed out that not only did the Alaska scheme discriminate against newcomers to the state, it also discriminated among long-time and even native-born Alaskans. *Id.* at 59 n.5, 102 S.Ct. at 2312 n.5. If Alaska were allowed to distribute public revenues in such a discriminatory way, the Court asked, "could states impose different taxes based on length of residence? Such a result would be clearly impermissible." *Id.* at 64, 102 S.Ct. at 2315.

Proposition 13 results in the same kind of discrimination between otherwise bona fide residents based on when they purchase property. New migrants to the state and California natives too young or otherwise unable to buy property in 1975 are all treated much less favorably than long-time residents, a "clearly impermissible" result under *Zobel*. Had Alaska conditioned the distribution of its oil dividends upon the length of time a person had resided at a particular *address* or in a particular *county*, the constitutional violation undoubtedly would have been at least as serious.

Proposition 13's welcome stranger provision forces long-time owners who wish to move to choose between staying put while enjoying vastly subsidized tax rates, or moving and paying rates that subsidize others. Along with the human costs of preventing freedom of movement, these distortive market signals also impair economic efficiency, impeding

business attempts to adapt to economic change by interfering with their ability to attract employees to new locations.

If this Court determines that Proposition 13's welcome stranger provision impedes the right to travel, then the provision is sustainable only if it furthers a compelling state purpose. *See Soto-Lopez*, 476 U.S. at 904, 106 S.Ct. at 2321.[20] If the state can achieve the same purposes in a less discriminatory manner, then it must use a less constitutionally offensive tax scheme. *See Dunn v. Blumstein*, 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274 (1972) ("[s]tatutes affecting constitutional rights must be drawn with 'precision' ") (citations omitted). As discussed above, California has not even offered a rational basis justification for its discriminatory welcome stranger provision and its resulting discrimination against newcomers, let alone provided a compelling reason to do so. Moreover, petitioner Nordlinger has pointed out several alternative tax schemes that achieve the same goals without impeding the right to travel.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for certiorari.

Respectfully submitted,

CARLYLE W. HALL, JR.
HALL & PHILLIPS

---

[21] The Court has been divided on the question of exactly which provision of the Constitution gives rise to the right to travel. Justice O'Connor has argued forcefully that the right arises from the privileges and immunities clause of article IV. *See Zobel*, 457 U.S. at 71, 102 S.Ct. at 2319 (O'Connor, J. concurring). Other Justices have suggested that the right is grounded in the equal protection clause. *See Soto-Lopez*, 476 U.S. at 902 n.2, 106 S.Ct. at 2320 n.2. Regardless of its source, the Court has been unified in requiring that a state support any statute that interferes with the right to travel with compelling justifications. *See e.g., id.* at 904 n.4, 106 S.Ct. at 2322 n.4 ("Laws which burden th[e] right [to travel] must be necessary to further a compelling state interest"); *Zobel*, 457 U.S. at 76-78, 102 S.Ct. at 2321-2322, (O'Connor, J. concurring) (describing stringent two-part test that a state must meet to overcome a right to travel challenge).

APPENDICES

CERTIFIED FOR PUBLICATION

In the Court of Appeal of the State of California

SECOND APPELLATE DISTRICT
DIVISION THREE

STEPHANIE NORDLINGER,
an individual

Plaintiff and Appellant,

v.

JOHN J. LYNCH, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES

Defendants and Respondents.

2d Civil No. B048719
(Super. Ct. No. C738781)
[Filed Dec. 3, 1990]

APPEAL from an order of the Superior Court of Los Angeles County. David Workman, Judge, Affirmed.

Hall & Phillips, Carlyle W. Hall, Jr., Mary Louise Cohen and Ann E. Carlson; Brent N. Rushforth, for Plaintiff and Appellant.

De Witt W. Clinton, County Counsel, David L. Muir, Senior Deputy County Counsel, and Albert Ramseyer, Senior Associate County Counsel, for Defendants and Respondents.

Ajalat & Polley, Charles R. Ajalat, Terry L. Polley and Richard J. Ayoob; Mayer, Brown & Platt and Michael W. McConnell; Howarth & Smith and Don Howarth; Barash & Hill, Alexander H. Pope, T. Larry Watts and Richard

A. Kolber; William K. Rentz, Amici Curiae on behalf of Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, Arthur C. De Goede, and Assistant Attorney General; Ronald A. Zumbrun, Anthony T. Caso and Johathan M. Coupal; Trevor A. Grimm, General Counsel, Los Angeles, Amici Curiae on behalf of Defendants and Respondents.

Plaintiff and appellant Stephanie Nordlinger (Nordlinger) appeals an order of dismissal following the sustaining without leave to amend of a demurrer to her first amended complaint. The demurrer was interposed by defendants and respondents John J. Lynch in his capacity as Tax Assessor for Los Angeles County (the Assessor) and the County of Los Angeles (sometimes collectively referred to as the Assessor).

SUMMARY STATEMENT

A dozen years have elapsed since California voters launched the so-called "tax revolt" and adopted Proposition 13 by a wide margin, adding article XIII A to the California Constitution.[1] In the intervening years, some disenchantment has set in with the "welcome stranger" clause, which bases real property assessments on acquisition cost rather than on current value. Generally, this system disproportionately burdens recent purchasers of real property, whose property is assessed at full current value, and favors longtime property owners, whose assessments reflect their outdated acquisition values. Articles and editorials have questioned the fairness of the acquisition value approach, especially as to younger persons, first-time home buyers and newcomers to the State.

While disillusionment with Proposition 13 and the welcome stranger aspect in particular has been mounting, it was the

---

[1]All further article and section references are to the California Constitution, unless otherwise specified.

recent United States Supreme Court opinion in *Allegheny Pitt. v. Webster County* (1989) ___ U.S. ___ [102 L.Ed.2d 688] (*Allegheny*), which provided the impetus for the present attack on Proposition 13. Some of the language used by the court in *Allegheny* has emboldened the Proposition 13 critics. They rely on such phrases as "[t]he constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." (*Id.*, p. 697.) They also invoke *Allegheny*'s related requirement "to seasonably dissipate the remaining disparity between [older] assessments and the assessments based on a recent purchase price." (*Ibid.*) Observers additionally point to *Allegheny*'s pronouncement that "'[i]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of [those] taxed upon the full value of [their] property.'" (*Id.*, at p. 698.)

Taken out of context, these statements appear to apply to the fact situation brought before this court by the plaintiff herein, Nordlinger, and the amici curiae on her behalf.[2] This challenge has compelled this court to consider whether *Allegheny* has undermined *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 (*Amador*), wherein the California Supreme Court upheld the constitutionality of article XIII A.

After a thorough analysis, we conclude *Allegheny* does not prohibit the states from adopting an acquisition value assessment method. *That decision merely prohibits the arbitrary enforcement of a current value assessment method.* Because *Allegheny* is inapposite, *Amador* remains controlling.

---

[2]Amicus curiae briefs in support of Nordlinger have been filed by the Building Industry Association of Southern California, Inc. and attorneys William K. Rentz and Charles R. Ajalat.

The State Board of Equalization, Howard Jarvis Taxpayers Association and Paul Gann's Citizen's Committee have filed amicus briefs in support of the Assessor.

Any modification of the provisions of Proposition 13 is for the political process, not the courts. The order of dismissal therefore is affirmed.

FACTUAL & PROCEDURAL BACKGROUND

1. *Key provisions of article XIII A in controversy.*

At the June 1978 primary election, the electorate adopted Proposition 13, thereby adding article XIII A to the California Constitution. The initiative measure changed the system of real property taxation and imposed important limitations upon the assessment and taxing powers of state and local governments. (*Amador, supra*, 22 Cal.3d at p. 218.)

Article XIII A provides in relevant part at section 1: "(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property."

The article defines "full cash value" in two ways: "the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' *or, thereafter*, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation." (Art. XIII A, 2, subd. (a), italics added.)

The full cash value base thereafter may be adjusted to "reflect from year to year the inflationary rate not to exceed 2 percent for any given year . . ., or may be reduced to reflect . . . a decline in value." (Art. XIII A, 2, subd. (b).)

2. *The reassessment of Nordlinger's home reflected the acquisition cost.*

As gleaned from the papers filed, Nordlinger purchased her first home on November 1, 1988, after living in rental property for 25 years and saving her money. She paid $170,000 for the subject property, located in the Baldwin Hills area of Los Angeles. The residence is part of a tract of single

family homes which was developed in 1947. It measures 1,114 square feet and is situated on a 8,200 square foot lot.

The previous owners, the Smiths, had purchased the property in 1986 for $121,500. While the Smiths owned the property, its assessed value was based on their $121,500 purchase price. In early 1989, the Assessor sent Nordlinger a notice of assessed value change and a joint consolidated supplemental tax bill which reflected a reassessment of the property to the new acquisition value of $170,000. The ownership change resulted in a tax increase on an annual basis of $454.

Nordlinger paid the tax bill "under protest." She then unsuccessfully filed a verified application for reduction of assessment and claim for refund with the Assessment Appeals Board.

3. *The complaints.*

After filing an original complaint on September 28, 1989, Nordlinger filed a first amended complaint against the Assessor on October 25, 1989, seeking declaratory relief pursuant to Revenue and Taxation Code section 4808[3] and a refund of property taxes. We summarize the essential allegations as follows:

The fair assessed value of Nordlinger's property was $30,000, taking into account the assessment of comparable properties in the neighborhood. For example, one neighbor's home contains square footage identical to Nordlinger's and sits on a lot which is 900 square feet larger than Nordlinger's. That home is assessed at $35,820 based on its 1975 valuation.

---

[3]Revenue and Taxation Code section 4808 allows any taxpayer to seek declaratory relief alleging the locally assessed property taxes have been illegally or unconstitutionally assessed or collected. The section is applicable only in instances where the alleged illegality occurred "as the direct result of a change in . . . law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer." (Rev. & Tax. Code, § 4808.)

Another neighbor's home is 44 square feet greater than Nordlinger's on a lot 1,040 square feet larger than Nordlinger's. That home is assessed at $36,107 based on its 1975 valuation. Thus, Nordlinger's annual property tax is nearly five times that paid by these neighbors on their comparable properties.

The examples reveal the welcome stranger approach of Proposition 13 has resulted in gross disparities in the assessed values of generally comparable properties. In 1978, immediately after the adoption of Proposition 13, the tax disparity between similar properties purchased in 1978 and those owned since 1975-76 was approximately 1.4 to 1. In 1989, the disproportionate assessments averaged 5 to 1 in Los Angeles County, while in certain neighborhoods, such as Venice, the disparity was 15 to 1, or more. As property values increase in the future, Proposition 13's discriminatory impact against more recent purchasers will be magnified.

Proposition 13 was promoted as a means of limiting government spending and making property taxes fair and within the ability of taxpayers to pay. However, it created an arbitrary system which imposed disparate tax burdens on owners of similarly situated properties without regard to the use of the real property, the burden the property placed on the government, the actual value of the property, or the financial means of the property owner.

The first cause of action sought a declaratory judgment that article XIII A is unconstitutional insofar as it requires owners of similarly situated properties to be taxed disparately.

The second cause of action sought an $896 refund of property taxes for 1988-89.

4. *The demurrer.*

The Assessor demurred to both causes of action on the ground *Amador* had determined the provisions of article XIII A do not violate the equal protection guarantees of the state and federal constitutions.

The Assessor also demurred to the first cause of action on the ground it was time-barred because the original complaint was not filed within 12 months after article XIII A became effective, as required by Revenue and Taxation Code section 4808.

5. *Nordlinger's opposition papers.*

Nordlinger's opposition memorandum maintained *Amador* was not controlling because it merely involved a facial challenge to Proposition 13 shortly after its adoption, and no evidence of actual disparities was presented in that case. Nordlinger further contended the dramatic disparities created by Proposition 13's welcome stranger tax assessment method had been rendered unconstitutional by *Allegheny*. In addition, the Revenue and Taxation Code section 4808 claim was timely because the action was filed within nine months of *Allegheny*, which effectively superseded *Amador*.

Alternatively, Nordlinger urged that if the trial court were to sustain the demurrer, she should be permitted to amend her complaint to include allegations based on further updated and extensive studies of property tax inequities in Los Angeles County. Allegations based on those studies would demonstrate the level of disparities generated by Proposition 13 between longtime property owners and recent purchasers of similarly situated real property range as high as 500 to 1 for unimproved parcels.

The proposed amendment also would allege Proposition 13 treats very different taxpayers as similar; consequently, in 1988 her modest Baldwin Hills tract home was assessed at virtually the same value as a Malibu beachfront home worth $2.1 million, 12 times more than her home, but purchased prior to 1976. Finally, the amended pleading would describe in detail Proposition 13's burden on interstate travel, which burdens could not be justified by any compelling state interest.

a. *Evidence of gross disparity between pre-1975 owners and new purchasers of property to support proposed second amended complaint.*

Nordlinger's extensive opposition memorandum was supported by ample evidence of the distortions created by Proposition 13 and expanded on the allegations set forth in her complaint.

Her papers included, inter alia, the declaration of David Gold, a consultant. Gold conducted an economic study to evaluate the magnitude of real property tax disparities between Nordlinger's property and similar neighboring properties acquired before 1975, as well as disparities in other neighborhoods within Los Angeles County.

Gold determined Nordlinger paid approximately five times more in property taxes than the average paid by the owners of 18 similar neighboring properties. Further, the disproportionate assessments in many neighborhoods were even greater. For example, in Venice, the ratio of the tax paid by a 1989 purchaser to the tax paid on a comparable home by a pre-1975 owner was 13:1. In Beverly Hills, the ratio was 12:1. Gold observed these disparities would become even more pronounced over time. He projected that even if the annual rate of appreciation in home values were to drop to 9.5 percent, a 13 to 1 differential would increase to 26 to 1 in just 10 years.

Gold observed that not only are individuals who own comparable homes taxed at disparate levels, but properties that vary greatly in value are taxed at similar levels. Due to Proposition 13's welcome stranger approach, the owner of a 7,800 square foot, 7 bedroom residence on a 28,000 square foot lot in Beverly Hills paid less in property tax than the owner of a 980 square foot Venice home on a 3,100 square foot lot.

Gold found additional disparity in that the property tax on longtime owners had fallen by 38 percent in real terms

because Proposition 13 allows at most a 2 percent annual increase in assessments, far below the rate of inflation. In 1978, the median price of an existing home in Los Angeles County was about $68,600. Its general property tax levy based on 1 percent of that value was $686. With a 2 percent annual increase, the 1989 tax bill on such property was $852. Had the original $686 tax bill kept pace with inflation, the 1989 tax bill would have been $1,372.

Nordlinger also offered the declaration of Robyn S. Phillips, an assistant professor of economics. A related exhibit indicates that in 1989, only 38 percent of single family residences in Los Angeles County had a 1975 base year value. That percentage had fallen from 45.2 percent three years earlier. Phillips concluded that for all single family homes in the County in 1989, the average assessed value was 44 percent of market value.[4]

Nordlinger also submitted a supporting declaration by Alexander H. Pope who served as tax assessor for the county between 1978 and 1986. According to Pope, there were many vacant lots on the tax rolls assessed at a 1975 base year value of less than $1,000. Those values were depressed because the lots were unbuildable hillside or canyon lots, or lacked road access, or the required Coastal Commission permits were unattainable. Many of the properties are now worth $100,000 or more because construction technology has improved, roads have been built, and Coastal Commission permits are more readily available.

b. *The proposed second amended complaint.*

The proposed second amended complaint set forth detailed factual allegations of disparity. It additionally pled, inter alia,

---

[4]Based thereon, Nordlinger submits that if all properties were reassessed to current market value, the County could lower its residential property tax rate from 1.0 percent to 0.44 percent without any loss in tax revenues.

that most people move due to necessity involving marriage, divorce, the death of a spouse, alteration of family size or a job change. Thus, Proposition 13 discriminates against new home purchasers in favor of longtime homeowners. It also discourages and penalizes individuals who wish to migrate within California or to migrate here from other states. Further, it penalizes those individuals who were not old enough to own property in 1975 and those who lacked the means to do so.

6. *The assessor's reply memorandum.*

The Assessor argued Nordlinger's equal protection and right to travel challenges were disposed of by *Amador*. Article XIII A met the rational basis test because it protected homeowners on fixed incomes, including disabled and retired persons, from being taxed on the appreciated value of their homes. In addition, Proposition 13 was rational because it allowed a new purchaser to predict the future taxes on the property.

Further, Nordlinger's other constitutional argument was unavailing because the right to travel guarantee only precludes the discriminatory distribution of government benefits. In addition, Nordlinger's Revenue and Taxation Code section 4808 claim was time-barred because *Allegheny* did not address Proposition 13 and therefore did not result in a change of law.

7. *The trial court's ruling.*

The matter was heard on January 29, 1990. By stipulation, the demurrer was deemed to have been brought by both named defendants. Citing *Amador* and Revenue and Taxation Code section 4808, the trial court sustained the demurrer without leave to amend on the grounds stated in the moving papers and ordered dismissal of the first amended complaint. The order of dismissal was filed on February 23, 1990. This appeal followed.

CONTENTIONS

Nordlinger contends: (1) *Amador* is not controlling because gross tax disparities among comparable property owners had not yet developed and merely a facial attack on Proposition 13 was presented to that court; (2) *Allegheny* invalidates a welcome stranger approach that imposes grossly disproportionate taxes on similarly situated property taxpayers; (3) because *Allegheny* is on point, it is binding on this court notwithstanding *Amador*; and (4) article XIII A is infirm because it impedes interstate and intrastate travel without a compelling state reason.[5]

DISCUSSION

1. *Standard of appellate review.*

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Buford v. State of California* (1980) 104 Cal.App.3d 811, 818.) When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The allegations are regarded as true and are liberally construed with a view to attaining substantial justice. (*Schaeffer v. State of California* (1970) 3 Ca.app.3d 348; *King v. Central Bank* (1977) 18 Cal.3d 840, 843.)

In addition, relevant matters which are properly the subject of judicial notice may be treated as having been pled. (*Helix*

---

[5]The extensive briefing by amici curiae largely reiterates the respective arguments of the parties, which we discuss *infra*. Additionally, Attorney Ajalat's brief urges article XIII A, section 2, violates the commerce clause of the Federal Constitution. (U.S. Const., art. I, § 8.) Said issue is presently pending in the First District Court of Appeal in *R. H. Macy & Co., Inc. v. Contra Costa County* (No. A049789), which case involves commercial real property. (Evid. Code, §§ 452, subd. (d), 459.) However, the commerce clause issue is outside the scope of homeowner Nordlinger's action and we do not reach it.

Land Co. v. City of San Diego (1978) 82 Cal.App.3d 932, 937.) Because we find it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with similar current market values, we take judicial notice of that fact and treat it as having been pled. (Evid. Code §§ 542, subd. (h), 459.) We thereafter consider whether *Allegheny* renders such alleged disparities constitutionally infirm.

Where, as here, a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility the defect can be cured by amendment. If not, there has been no abuse of discretion and we must affirm. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

2. *The Amador decision.*

The California Supreme Court rendered its decision in *Amador* in September 1978, just three months after the adoption of Proposition 13. The petitioners therein, who were various governmental agencies and concerned citizens, alleged actual or potential adverse effects resulting from the adoption and operation of the article. (*Amador, supra*, 22 CaL.3d at pp. 218-219.) They raised multiple constitutional challenges, including contentions based on the federal equal protection clause (U.S. Const., 14th Amend., § 1), and the right to travel (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582). (*Amador, supra*, at pp. 232-238.) The Supreme Court concluded article XIII A survived each of the substantial challenges which had been raised and denied the petitions. (*Id.*, at p. 248.)

a. *Equal protection of the laws.*

The *Amador* petitioners argued the rollback of assessed valuation to the 1975-76 fiscal year would result in invidious discrimination among owners of similarly situated property. By reason of the rollback provision, two substantially identical homes located side-by-side and receiving identical governmental services, could be assessed and taxed at different levels depending on their date of acquisition. Petitioners contended such a disparity in tax treatment constituted arbitrary discrimination in violation of the federal equal protection clause. (*Amador, supra*, 22 Cal.3d at pp. 232-233.)

Preliminarily, the Supreme Court observed the equal protection challenge "arguably, is premature . . ., and we could decline to consider the issue in the abstract and instead await its resolution within the framework of an actual controversy wherein the disparity is pivotal." (*Amador, supra*, 22 Cal.3d at p. 233.) Nonetheless, the Supreme Court chose to reach the merits, "elect[ing] to treat the equal protection issue as constituting an attack upon the face of the article itself, because the assessors throughout this state must be advised whether to follow the new assessment procedure." (*Ibid.*)

Amador recognized the equal protection challenge required it to scrutinize article XIII A under the deferential rational basis standard. (*Amador*, 22 Cal.3d at p. 233.) Under that standard, so long as a system of taxation "is supported by a rational basis, and is not palpably arbitrary," it will be upheld. (*Id.*, at p. 234; *Kahn v. Shevin* (1974) 416 U.S. 351, 356, fn. 10 [40 L.Ed.2d 189]; *Allied Stores of Ohio v. Bowers* (1959) 358 U.S. 522, 527 [3 L.Ed.2d 480].) Further, a state tax law is not arbitrary although it discriminates in favor of a certain class if the discrimination is founded upon "'a reasonable distinction, or difference in state policy," not in conflict with the Federal Constitution.'" (*Amador, supra*, 33 Cal.3d at p. 234; *Kahn v. Shevin, supra*, 416 U.S. at pp. 355-356.)

Petitioners relied upon a line of cases which held, as a general proposition, that the *intentional, systematic undervaluation* of property similarly situated with other property assessed at its full value amounted to a deprivation of equal protection. (*Amador, supra*, 22 Cal.3d at p. 234; see *Cumberland Coal Co. v. Board* (1931) 284 U.S. 23, 28

[76 L.Ed. 146]; *Sioux City Bridge v. Dakota County* (1923) 260 US. 441, 445 [67 L.Ed. 340]; *Hillsborough v. Cromwell* (1946) 326 U.S. 620, 623 [90 L.Ed. 358].)

Amador held those cases arising in other jurisdictions were inapposite because they involved constitutional or statutory provisions which *mandated* the taxation of property on a *current value* basis, while article XIII A provides that all property, except property acquired prior to 1975, is to be assessed at its *acquisition value*. (*Amador, supra*, 22 Cal.3d at p. 235.) Further, the states were not confined to a current value system under equal protection principles. (*Id.*, at pp. 235-237.) Thus, an acquisition value system will be sustained if it is founded upon some rational basis. (*Id.*, at p. 235.)

Amador found a rational basis for the acquisition value approach. Such assessment method relates the annual tax to the original cost of the property rather than to an unforeseen and perhaps unduly inflated current value. It also allows each property owner to estimate future tax liability with substantial certainty. (*Amador, supra*, 22 Cal.3d at p. 235.) Further, the acquisition value approach of article XIII A was not unique in concept. Sales tax on personal property similarly is based on acquisition cost. Thus, two consumers may pay different taxes on substantially identical personal property, depending upon the exact sales price and the availability of a discount. (*Id.*, at pp. 235-236.)

Moreover, the acquisition value approach was rational despite the fact article XIII A deems persons who acquired property prior to 1975 to have purchased it during 1975. While the selection of the 1975-76 fiscal year as a base year was seemingly arbitrary, it was comparable to a grandfather clause and an earlier cut off date reasonably might have been considered both administratively unfeasible and incapable of producing adequate tax revenues. (*Amador, supra*, 22 Cal.3d at p. 236.)

In sum, there is no requirement that property of equal current value must be taxed equally, regardless of its original

cost. (*Amador, supra*, 22 Cal.3d at p. 236.) Because an acquisition value approach, by which a property owner's tax liability bears a reasonable relation to the acquisition cost, is neither wholly arbitrary nor irrational, article XIII A met the demands of the equal protection clause. (*Id.*, at p. 237.)

b. *Alleged right to travel impairment.*

The *Amador* petitioners also contended article XIII A would impair the fundamental right to travel because nonresidents or newly arrived residents would be subject to higher property taxes than established residents. As a result, property owners would be deterred from relocating. (*Amador, supra*, 22 Cal.3d at p. 237.)[6]

Amador rejected the right to travel challenge, observing travel was no more inhibited under the new system which established a more fixed and stable measure of taxes, than under the former system. The change from a current value system to an acquisition system was intended to benefit all property owners, past and future, resident and nonresident, by reducing inflationary pressures in assessments, by limiting tax rates, and by permitting the taxpayer to make a more careful and accurate prediction of future tax liability. (*Amador, supra*, 22 Cal.3d at p. 238.)

---

[6]The *Amador* petitioners relied on *Associated Home Builders etc., Inc. v. City of Livermore, supra*, 18 Cal.3d at page 602, which held legislation is subject to strict scrutiny if it directly burdens the right to travel by distinguishing between nonresidents or newly arrived residents on the one hand and established residents on the other and imposing penalties and disabilities on the former group. However, legislation which does not penalize travel but merely makes it more difficult for the outsider to establish a residence in the place of his or her choosing is scrutinized under a rational relationship test. (*Id.*, at pp. 602-604; see *Amador, supra*, 22 Cal.3d at p. 237.)

3. *Amador binding on this court unless Allegheny is directly on point.*

We are unpersuaded by Nordlinger's argument this court is not bound by *Amador*'s rejection of the equal protection and right to travel challenges because that case involved a mere facial attack on article XIII A's welcome stranger provision without any evidence of actual disparities.

First and foremost, while *Amador* found the equal protection contention "arguably . . . premature," it proceeded to rule on the merits of the issue after expressly "declin[ing] to . . . await its resolution within the framework of an actual controversy . . . ." (*Amador, supra*, 22 Cal.3d at p. 233.)

In addition, it can hardly be said the present disparities complained of by Nordlinger and offered in great detail in her pleadings were totally unforeseen by the *Amador* court. That decision plainly anticipated disparities in assessments of comparable properties would increase over time. In discussing the impact of an acquisition cost approach, *Amador* quite specifically recognized a property acquired in 1977 for $80,000 would incur double the tax of a similar property acquired just two years earlier for $40,000. (*Amador, supra*, 22 Cal.3d at p. 235.) The *Amador* decision is not rendered invalid by the fact the expected disparities generated by article XIII A have since materialized.

Further, the binding force of *Amador* is not diminished by any unfairness which has developed from the acquisition value system. In upholding article XIII A against the equal protection challenge, *Amador* alluded to fairness as an ingredient of equal protection and observed an acquisition value system "may operate on a *fairer* basis than a current value approach." (*Amador, supra*, 22 Cal.3d at p. 235, italics added.) If article XIII A has turned out to be unfair as forcefully argued by Nordlinger and the amici curiae on her side, a revisiting of *Amador* may be deemed appropriate. However, *Amador*'s failure to perceive any potential unfairness of an acquisition value approach does not permit this court to depart from that decision.

Therefore, unless the United States Supreme Court's subsequent decision in *Allegheny* is *directly on point*, we are bound by the California Supreme Court'sdecision in *Amador* upholding article XIII A against federal constitutional challenges based on equal protection and the right to travel. (*Birkhofer v. Krumm* (1938) 27 Cal.App.2d 513, 536-537.)

In *Birkhofer*, as here, the Court of Appeal was urged to diverge from California Supreme Court authority due to developments in United States Supreme court decisional law. *Birkhofer* declined to depart from California precedent, explaining it is the function of the California Supreme Court, rather "than of any state court subordinate to it, to announce changes in what has hitherto been treated within the state as the settled law with respect to constitutionality [under the United States Constitution] of a given application of a state statute, *unless indeed there be so exact a parallel between a particular case presented and a controlling decision of a federal court*, that no reasonable distinction between them can be made." (*Birkhofer v. Krumm, supra*, 27 Cal.App.3d at pp. 536-537, italics added.)

Thus, "[w]e are not permitted to violate stare decisis for the sake of straws in the wind. Our duty as an intermediate appellate court is to follow the decisional law laid down by the state Supreme Court. We violate jurisdictional bounds when we do otherwise. (*Auto Equity Sales, Inc. v. Superior Court* [1962] 57 Cal.3d 450 [20 Cal.Rptr. 321, 369 P.2d 937].)" (*Beckman v. Mayhew* (1975) 49 Cal.App.3d 529, 535.)

With these principles in mind, we turn to the *Allegheny* decision.

4. *Allegheny case summary*

The West Virginia Constitution guarantees to its citizens that with certain exceptions, "taxation shall be *equal and uniform* throughout the State, and all property, both real and personal, shall be *taxed in proportion to its value* . . . ." (W.Va. Const., art. X, § 1, italics added.)

Notwithstanding this principle of uniformity, the tax assessor of West Virginia's Webster County valued the properties of petitioner coal companies on the basis of their recent purchase price but made only minor modifications in the assessments of comparable land which had not been recently sold. The assessor fixed yearly assessments for property within the county at 50 percent of appraised value, and determined appraised value by using the declared consideration at which a property was last sold. This practice resulted in gross disparities in the assessed value of generally comparable properties. Petitioners' properties were assessed at 8 to 35 times the value of comparable properties which had not recently changed hands. As to certain property, the county's gradual adjustment policy would have required more than 500 years to equalize the assessments. (*Allegheny, supra*, 102 L.Ed.2d at pp. 693-696.)

To resist petitioners' equal protection challenge, Webster County argued its assessment scheme was rationally related to its purpose of assessing properties at true current value. When available, it made use of accurate information about the market value of a property—the price at which it was recently purchased. As that data grew stale, it periodically adjusted the assessment based on some perception of the general change in local property values. (*Allegheny, supra*, 102 L.Ed.2d at pp. 696-697.)

Allegheny rejected Webster County's proffered rationale, observing that the equal protection clause prohibits "'taxation which in fact bears unequally on persons or property of the same class.'" (*Allegheny, supra*, 102 L.Ed.2d at p. 697.) West Virginia's Constitution and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the state according to its estimated market value. (*Id.*, at p. 698.) Use of a general adjustment as a transitional substitute for an individual reappraisal did not violate equal protection as long as the general adjustments were sufficiently accurate over a short period of time to equalize the differences in proportion between the assessments of a class of property

holders. (*Id.*, at p. 697.) "*[T]he constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners.* [Citations.]" (*Ibid.*, italics added.) Wester County's adjustments to the assessments of property not recently sold were too small "*to seasonably dissipate the remaining disparity between these assessments and the assessments based on a recent purchase price.*" (*Ibid.*, italics added.)

Further, it is established that " '*[i]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.*' [Citations.] 'The equal protection clause . . . protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class.' [Citation.]" (*Allegheny, supra*, 102 L.Ed.2d at p. 698, italics added.)

Allegheny found the relative undervaluation of comparable property within Webster County was systematic and intentional. The assessor's arbitrary practice, which based petitioners' assessments upon the full market value of their property, while assessing comparable property pursuant to outdated values, had denied petitioners equal protection under West Virginia law. (*Allegheny, supra*, 102 L.Ed.2d at pp. 698-699.)

In a footnote toward the end of the opinion, *Allegheny* briefly acknowledges California's article XIII A *without* addressing its constitutionality. The footnote states: "We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIIIA of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred, constructed upon, or, in a limited manner for

inflation. Cal. Const., Art XIIIA, § 2 (limiting inflation adjustments to 2% per year.) The system is grounded upon the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Allegheny, supra*, 102 L.Ed.2d at p. 698, fn. 4.)

5. *Allegheny decision inapposite.*

Allegheny plainly is unavailing to Nordlinger because by adopting article XIII A, California has opted for an assessment method based on each individual owner's *acquisition* cost.

In marked contrast, the West Virginia Constitution requires property to be taxed at a uniform rate statewide according to its estimated *current market value*. (*Allegheny, supra*, 102 L.Ed.2d at p. 698.) *Allegheny*'s holding must be viewed in that context. Thus, *Allegheny* does not stand for the general proposition that a welcome stranger approach which bases assessed value on acquisition cost violates equal protection. Nor does *Allegheny* hold that large disparities in the assessments of properties with similar current market values are unconstitutional per se.

Rather, *Allegheny* reiterates the principle that intentional undervaluation by state officials of other property in the *same class* contravenes the equal protection clause. (*Allegheny, supra*, 102 L.Ed.2d at p. 698.)[7] If state law mandates a current market value assessment method, the state may not discriminate against new purchasers by only reassessing recently acquired property. To satisfy the equal protection clause, a state which has chosen a market value approach must "seasonably dissipate" disparities between the assessments of property not recently sold and assessments based on a recent purchase price. (*Allegheny, supra* 102 L.Ed.2d at p. 697.)

Because California law provides for an acquisition value assessment method, Nordlinger's reliance on *Allegheny*'s striking down of an arbitrarily enforced current value method is misplaced. Further, nothing in *Allegheny* calls into question *Amador*'s rejection of the right to travel challenge. Accordingly, we remain bound by *Amador* on both of these constitutional questions.

---

[7]See for example, *Sunday Lake Iron co. v. Wakefield* (1918) 247 U.S. 350 [62 L.Ed. 1154], cited by *Allegheny, supra*, 102 L.Ed.2d at pages 697, 698. In *Sunday Lake*, an inexperienced local assessor adopted the $65,000 valuation which his predecessor had placed upon the taxpayer's property. Subsequently, the Michigan legislature passed an act to appraise all mining properties, and plaintiff's property was reassessed to $1,071,000. Because of an alleged lack of time and inadequate information, the state board of tax assessors declined to order a new and general survey of values or generally to increase other assessments, although plaintiff contended other properties were being assessed at no more than one-third of their market value. The following year, a diligent and successful effort was made to rectify any inequality. (*Sunday Lake Iron Co., supra*, 247 U.S. at pp. 352-353.)

Sunday Lake declared intentional systematic undervaluation by state officials of other property "in the same class" contravenes the constitutional right of those taxed upon the full value of their property. However, it found no denial of equal protection because the assessor did not intentionally violate the essential principle of practical uniformity. (*Sunday Lake Iron Co., supra*, 247 U.S. at pp. 352-353.)

a. *Article XIII A comports with settled equal protection principles as reiterated in Allegheny.*

Allegheny reiterates the prohibition on discrimination against property owners who are similarly situated within the *same class*. Article XIII A complies with that principle. California does not discriminate against similarly situated property owners because each owner's assessment is based on acquisition cost.

Further, *Allegheny* recognized "[t]he States, . . ., have broad powers to impose and collect taxes. A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable. *Allied Stores [of Ohio v. Bowers* (1959) 358 U.S. 522] 526-527, . . ." (*Allegheny, supra*, 102 L.Ed.2d at p. 697.)[8] A state may decide to tax property held by corporations at a different rate than property held by individuals. (*Allegheny, supra*, 102 L.Ed.2d at p. 697.) "In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference of policy, there is no denial of

---

[8] *Allied Stores* involved an equal protection challenge to an Ohio statute which exempted from ad valorem taxation merchandise belonging to a nonresident if held in a storage warehouse for storage only. (*Allied Stores of Ohio, supra*, 358 U.S. at pp. 522-523.) It illustrates the application of the deferential rational basis standard.

The United States Supreme Court noted: "[I]t has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it. [Citations.]" (*Allied Stores, supra*, 358 U.S. at p. 528.) The court then rejected the constitutional claim, holding "it is obvious that it may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso, to encourage the construction or leasing and operation of warehouses in Ohio by nonresidents with the attendant benefits to the State's economy, . . ." (*Id.*, at pp. 528-529.)

the equal protection of the law.' [Citation.]" (*Id.*, at pp. 697-698.)

Moreover, the states are not confined to a current value system under equal protection principles, and West Virginia was not precluded from adopting an assessment scheme based on a standard other than market value. (*Allegheny, supra*, 102 L.Ed.2d at p. 698.)

Thus, it cannot be said an acquisition value assessment method contravenes equal protection under the law. Today, as when it was adopted, Proposition 13 can be upheld "on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Allegheny, supra*, 102 L.Ed.2d at p. 698, fn. 4.) That is the beginning and the end of the inquiry. Any further scrutiny would involve the court impermissibly in examining the desirability of Proposition 13. (See *Daniel v. Family Ins. Co.* (1949) 336 U.S. 220, 224 [93 L.Ed. 632].)

6. *Additional arguments based on post-Amador right to travel cases.*

In addition to *Allegheny*, Nordlinger relies on other United States Supreme Court decisions after *Amador* to overturn *Amador*'s disposition of the right to travel issue under a heightened scrutiny standard.[9]

---

[9] The United States Supreme Court has observed "right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer term residents. [Citations.]" (*Zobel v. Williams, supra*, 457 U.S. at pp. 60-61, fn. 6 [72 L.Ed.2d 672, 677-678].) However, "regardless of the label we place on our analysis—right to migrate or equal protection—once we find a burden on the right to migrate the standard of review is the same. Laws which burden that right must be necessary to further a compelling state interest. [Citation.]" (*Attorney General of N.Y. v. Soto-Lopez* (1986) 476 U.S. 898, 904-905, fn. 4 [90 L.Ed.2d 899, 906-907].)

In *Zobel v. Williams* (1982) 457 U.S. 55, 56, the high court invalidated an Alaska statute which distributed income from state natural resources to Alaska citizens based on the length of each citizen's residence. *Zobel* held Alaska's unequal distribution of benefits failed even minimal rational basis scrutiny under the equal protection clause because Alaska's objective of rewarding citizens for past contributions was not a legitimate state purpose. (*Id.*, at pp. 60-63.)

In *Hooper v. Bernalillo County Assessor* (1985) 472 U.S. 612, 614, 623 [86 L.Ed.2d 487], the court struck down on equal protection grounds a New Mexico statute granting a property tax exemption to those Vietnam veterans who resided in the state before a specified date. *Hooper* observed: "Stripped of its asserted justification, the New Mexico statute suffers from the same constitutional flaw as the Alaska statute in *Zobel*. [Fn. omitted.] The New Mexico statute, by singling out previous residents for the tax exemption, rewards only those citizens for their 'past contributions' toward our Nation's military effort in Vietnam. . . . The State may not favor established residents over new residents based on the view that the State may take care of 'its own,' if such is defined by prior residence. . . . [¶] [T]he Constitution will not tolerate a state benefit program that 'creates fixed, permanent distinctions . . . between . . . classes of concededly bona fide residents, based on how long they have been in the State.' [Citation.] [Fn. omitted.]" (*Id.*, 472 U.S. at pp. 622-623, 105 S.Ct. at 2869.)

Similarly in *Attorney General of N. Y. v. Soto-Lopez, supra*, 476 U.S. 898, 106 S.Ct. 2317, the court held a New York preference in civil service employment favoring veterans who were residents when they entered military service violated the rights to travel and to equal protection of resident veterans who resided outside New York when they entered military service. (*Id.*, at pp. 899, 911, 106 S.Ct. at 2318, 2325.) New York failed to demonstrate a compelling state interest for its classification because each of its asserted purposes could be achieved without penalizing veterans who did not meet

the prior residence requirement. (*Id.*, at pp. 909-911, 106 S.Ct. at 2324-2325.)

The above cited cases constitute good law but Nordlinger's reliance thereon is misplaced. Her argument overlooks the crucial fact that article XIII A's acquisition value assessment scheme applies equally to *nonresident* owners. Unlike the New Mexico residency-based tax exemption which was invalidated in *Hooper*, article XIII A bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state. While the acquisition value assessment method relatively benefits longtime residents, that result merely is incidental to an acquisition value approach. In sum, the right to migrate is not burdened here.

Therefore, we are unpersuaded by the contention that since *Amador*, a heightened scrutiny standard has replaced the rational basis test utilized in *Amador*. The rational basis test employed by *Amador* remains the appropriate level of scrutiny herein.

7. *Article XIII A amendments do not invalidate it.*

Lastly, the rational basis of the acquisition value system is not invalidated by the fact that in the years since *Amador*, article XIII A, section 2, has been amended to provide base-year values may be transferred to certain replacement properties, and that certain transfers of property are deemed not to be a change of ownership.[10] In the field of taxation, the states enjoy wide "latitude . . . in the classification of property . . . and the granting of partial or total exemptions upon grounds of policy." (*Royster Guano Co. v. Virginia* (1920) 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed. 989, 991; see *U.S. Railroad Retirement Bd. v. Fritz* (1980) 449

---

[10]For example, the transfer of a principal residence from parents to children does not trigger a reassessment. (Art. XIII A, § 2, subd. (h).)

U.S. 166, 174-176, 101 S.Ct. 453, 459-460, 66 L.Ed.2d 368.) While we do not have the occasion here to address the propriety of those various exceptions, the existence thereof does not deprive article XIII A, section 2, of its essential rational basis, namely, to protect owners of real property from being assessed on their unrealized gains. (*Amador, supra*, 22 Cal.3d at p. 235, 149 Cal.Rptr. 239, 583 P.2d 1281.)

CONCLUSION

The expected disparities of article XIII A, which severed assessed value from current market value, have manifested themselves in the years since the *Amador* decision. Nonetheless, as *Amador* determined, the article passes muster under the rational basis standard because it protects taxpayers from being assessed on the appreciated but unrealized value of their real property.

Allegheny is inapposite because it involves the intentional undervaluation of comparable property under a current market value assessment method. Because *Allegheny* held West Virginia was free to adopt an assessment approach based on a standard other than current market value, California is not precluded from basing real property assessments on acquisition value.

Article XIII A does not burden the right to migrate because the acquisition value system is equally applicable to nonresidents and does not classify California residents according to the time they established residence. While longtime residents derive relatively greater benefits from the acquisition value system, that result merely is incidental to an acquisition value approach.

Because Nordlinger is not capable of amending her pleading to state a cause for action for declaratory relief or for refund of taxes paid, the trial court properly sustained the demurrer to both causes of action without leave to amend.

Proposition 13 was a product of the tax revolt movement that swept California in the late 1970's. Because article XIII A is not constitutionally infirm, homeowners such as Nordlinger who seek a fairer tax assessment scheme must look again to the political process, not to the courts.[11]

DISPOSITION

The order of dismissal is affirmed. Each party to bear respective costs on appeal.

CERTIFIED FOR PUBLICATION

KLEIN, P.J.

We concur:

DANIELSON, J.
CROSKEY, J.

---

[11]It is questionable, however, whether a majority of the electorate ever will be sufficiently aggrieved to repeal article XIII A's acquisition value assessment method. Although most current homeowners acquired their properties after 1975, they too are relatively benefitted by the acquisition value approach because their assessments do not reflect the subsequent appreciation in the value of their properties. Further, as property prices continue to climb due to inflation, a new purchaser's acquisition value soon is exceeded by the property's current value, thus giving the new owner a stake in the acquisition value system.

Second Appellate District, Division Three, No. B048719
S019164

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

STEPHANIE NORDLINGER, Appellant

v.

JOHN J. LYNCH Et Al., Respondents

Petition for review DENIED.

Kennard, J. is of the opinion the petition should be granted.

Chief Justice

APPENDIX B

ARTICLE 13A, CALIFORNIA CONSTITUTION
(Proposition 13)

§ 1. Ad valorem tax on real property; maximum amount; application

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(Added June 6, 1978. Amended June 3, 1986.)

§ 2. Full cash value; reassessment; newly constructed property; seismic safety; value and location of replacement dwelling; full cash value base; change in ownership; family transfers

Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with

any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this state. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after the date the county adopted

the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include *** any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, which is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single or multiple family dwelling which is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to severely disabled person.

(d) For purposes of this section, the term "change in ownership" shall not include the acquisition of real property

as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect.

(e) Notwithstanding any other provision of this section, the Legislature shall provide that the base-year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property, within the same county, that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

This subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base-year values for the 1985-86 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse which take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) For purposes of subdivision (a), the terms "purchased" and "change of ownership" shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first $1,000,000 of the full cash value of all other real property between parties and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(i) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership which occur, and

new construction which is completed, on or after the effective date of the amendment.

(Added June 7, 1978. Amended Nov. 7, 1978; Nov. 4, 1980; June 8, 1982; June 5, 1984; Nov. 6, 1984; June 3, 1986; Initiative Measure, Nov. 4, 1986; Nov. 4, 1986; Nov. 8, 1988; S.C.A. 37 (Prop. 110), approved June 5, 1990.)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DEPT. 36

Date : 01 / 29 / 90 HONORABLE : DAVID A. WORKMAN JUDGE HONORABLE JUDGE PRO TEM # 10 NONE Deputy Sheriff	S. RAINWATER DEPUTY CLERK_____ _____ NONE Reporter (Parties and counsel checked if present)

9:00 am	C738781 STEPHANIE NORDLINGER vs. JOHN J. LYNCH, etc., et al	Counsel for Plaintiff HALL & PHILLIPS By: C. HALL (x) Counsel for Defendant COUNTY COUNSEL OF COUNTY OF LOS ANGELES by: A. RAMSEYER (x) A. RAMSEYER (x)

NATURE OF PROCEEDINGS.

DEMURRER OF DEFENDANT JOHN J. LYNCH TO THE FIRST AMENDED COMPLAINT

.

.

By stipulation of the parties, the demurrer is deemed to have been brought by both named defendants, John J. Lynch, in his capacity as Tax Assessor for Los Angeles County, and Los Angeles County.

.

The Court considers the opposition papers on their merits notwithstanding their defective proofs of service.

.

Responding party's request for judicial notice is denied for the reason that responding party has provided no copy of the material that is the subject of her request.

DEPT. 36

MINUTES ENTERED
01 / 29 / 90
COUNTY CLERK

APPENDIX D

.

The demurrer is sustained on the grounds stated therein, without leave to amend. Revenue and Tax Code 4808; Amador Valley Joint Union High School District v State Board of Equalization (1978) 22 Cal. 3d 208, 234-237.

.

For future reference, the Court reminds both sides of the provisions of CRC Rule 201(b).

.

On oral motion of the demurring parties, the First Amended Complaint is ordered dismissed. CCP 581(f)(1)

.

All future appearance dates in this department are ordered advanced and vacated.

.

Notice is waived; demurring parties to prepare and submit proposed order of dismissal.

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE FEB 0 5 1990
ATTEST _____
FRANK S. ZOLIN
County Clerk / Executive Officer of the Superior Court of California, County of Los Angeles
BY _____, DEPUTY

TABLE 1

RESIDENTIAL PROPERTY TAX DISPARITIES THROUGHOUT LOS ANGELES COUNTY

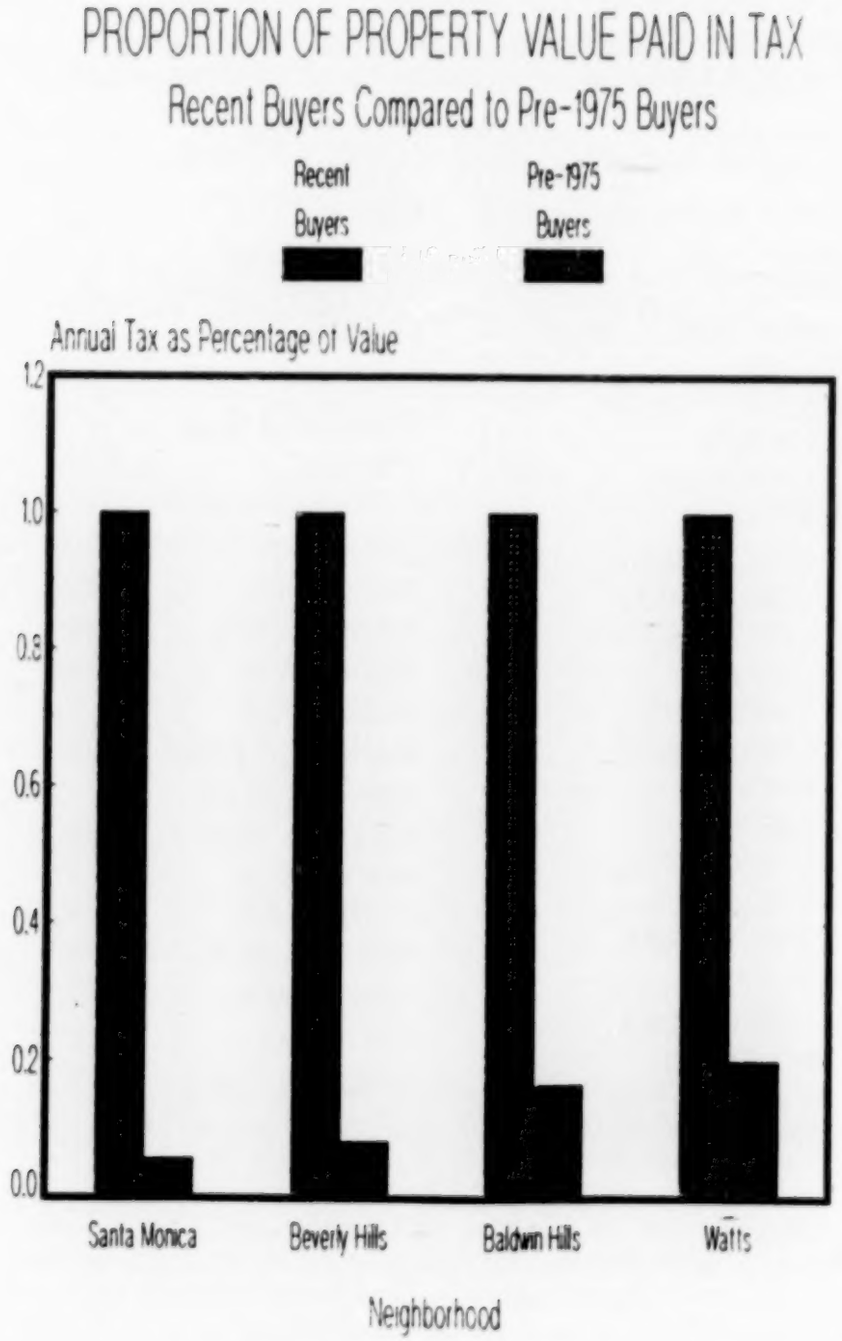
CURRENT ASSESSMENTS OF COMPARABLE PROPERTIES 1989 PURCHASERS: PRE-1975 PURCHASERS [1]

NEIGHBORHOOD	ASSESSMENTS
SANTA MONICA (Ocean Park)	17:1
VENICE (Walk Streets)	13:1
BEL AIR	13:1
SHERMAN OAKS	12:1
CERRITOS	12:1
ARCADIA	12:1
WESTWOOD	12:1
PACIFIC PALISADES	12:1
BEVERLY HILLS	12:1
W. LOS ANGELES (Rancho Park)	12:1
BRENTWOOD	11:1
HOLMBY HILLS	11:1
GLENDALE	11:1
EL MONTE	11:1
SOUTH GATE	11:1
SAN GABRIEL	11:1
GRIFFITH PARK	11:1
PASADENA	11:1
PALOS VERDES	10:1
LONG BEACH	10:1
ENCINO	10:1
SAN PEDRO	10:1
PALMS	10:1
SILVERLAKE	10:1
SANTA CLARITA	10:1
LOS ANGELES (Mid-City)	10:1
GRANADA HILLS	10:1
BOYLE HEIGHTS	10:1
POMONA	10:1
SUNLAND	10:1
EAGLE ROCK	10:1
MONROVIA	9:1
GLENDORA	9:1
HANCOCK PARK	9:1
LOS ANGELES (Coliseum Area)	9:1
MAR VISTA	9:1
HYDE PARK	9:1
PARK LA BREA	9:1
ALHAMBRA	9:1
WEST HILLS	9:1
LINCOLN PARK	9:1

[1] These ratios were determined based on a computer analysis of every property sold in Los Angeles County in the month of August, 1989. For every sale, economist David Gold calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment).
Source: I J. A. 109.

APPENDIX E

FIGURE 1



(Based on Tables 1 & 2)

TABLE 2

DIFFERENCE IN PROPERTY TAXES BETWEEN COMPARABLE HOMES IN SELECTED NEIGHBORHOODS

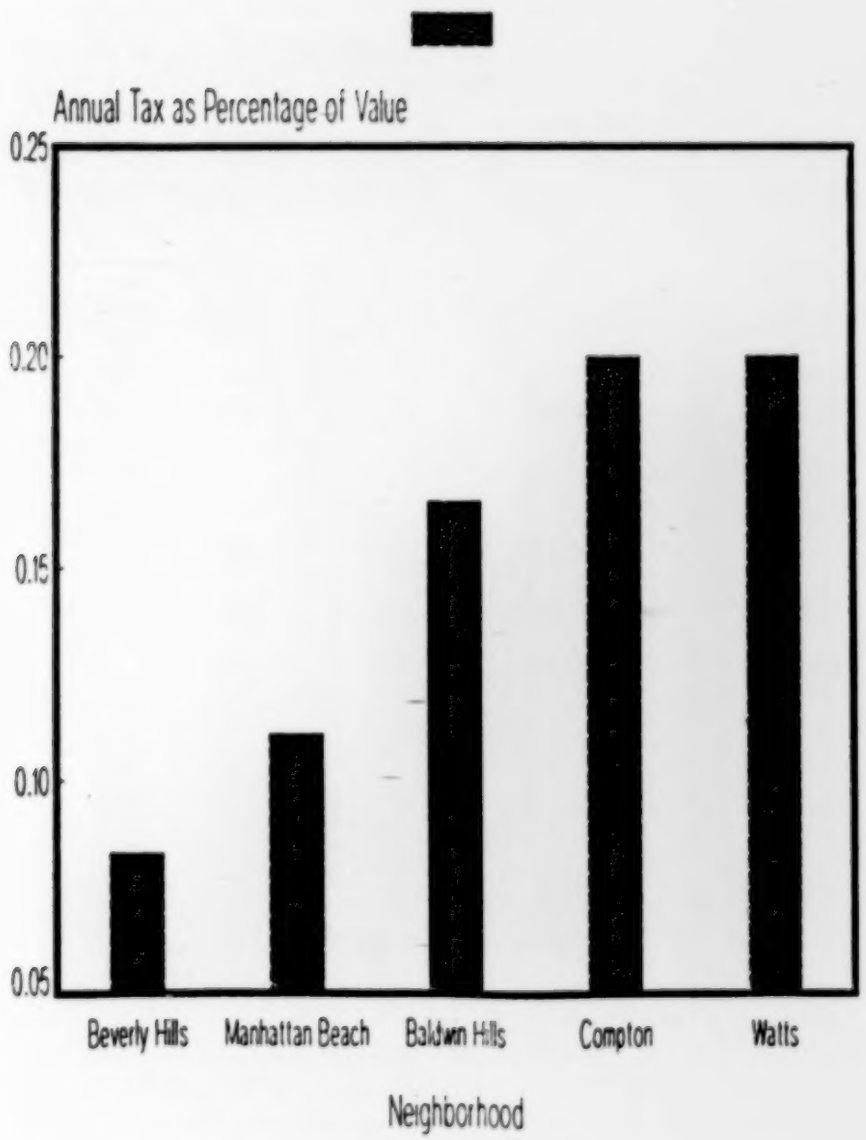
NEIGHBOR-HOOD[1]	CURRENT MARKET VALUE OF HOME	TAX ON NEW OWNER	TAX ON PRE-1975 OWNER[2]	RATIO OF TAX ON NEW OWNER TO TAX ON PRE-1975 OWNER
BEVERLY HILLS	$3,800,000	$38,000	$3,230	12:1
MANHATTAN BEACH	630,000	6,300	680	9:1
BALDWIN HILLS (Petitioner's Area)	210,000	2,100	360	6:1
COMPTON	90,000	900	180	5:1
WATTS	80,000	800	160	5:1

[1]Each neighborhood entry corresponds to an actual pair of homes displaying tax disparities between recent and long-time owners that are typical in their neighborhood for this class of home. In each instance, the home owned by a pre-1975 buyer was judged by a professional appraiser to be comparable with or superior to the corresponding recently puchased home. *See* II J.A. 306; I J.A. 127.

[2]The taxes are calculated at the 1% rate; because rates to pay for voter approved indebtedness vary around the county, actual taxes may be slightly above 1%.

Source: I J.A. 127.

FIGURE 2



(Based on Table 2)

TABLE 3

RATE AT WHICH TAX DIFFERENTIALS HAVE GROWN SINCE THE ARTICLE XIIIA BASELINE YEAR, AND PROJECTED DIFFERENTIALS IN 10 MORE YEARS IN SELECTED NEIGHBORHOODS

	Annual[1] Growth Rate of Home Values	Annual[2] Growth Rate of Tax Differ-entials	Current Tax Differ-entials	Years Taken For Tax Differ-entials to Double	Projected Tax Differ-entials 10 Years From Now
VENICE	22.5%	20.1%	13:1	3.8	81:1
BEVERLY HILLS	21.1%	19.4%	12:1	3.9	71:1
MAR VISTA	18.3%	16.0%	8:1	4.7	35:1
BALDWIN HILLS (Petitioner's Area)	16.0%	13.7%	6:1	5.4	22:1
WATTS	14.4%	12.2%	5:1	6.0	16:1

[1]This column is based on the average rate at which home values have grown in each neighborhood since 1975.

[2]The growth rate of the tax differentials differs from the growth rate of the values of the properties because of the 2% annual adjustment allowed under Article XIIIA. *See* I J.A. 130, 131.

Source: I J.A. 130,131.

TABLE 4

DISPARITIES IN TAXES PAID BY LONG-TIME AND RECENT OWNERS OF COMPARABLE VACANT LOTS IN LOS ANGELES COUNTY[1]

LOCATION	ANNUAL TAX ON LONG-TIME OWNER[2]	ANNUAL TAX ON NEW OWNER	PROPERTY TAX ASSESSMENTS BASED ON 1989 PURCHASE PRICE: PROPERTY TAX ASSESSMENTS BASED ON 1975-76 VALUES
PACIFIC PALISADES	$ 6.00	$3,500.00	583:1
PACIFIC PALISADES	10.00	2,600.00	252:1
BEVERLY GLEN CANYON/LA	4.60	500.00	108:1
LAUREL CANYON/LA	38.00	3,500.00	93:1
MALIBU	59.00	5,000.00	85:1
BEL AIR	66.00	3,450.00	53:1
LAUREL CANYON/LA	15.00	750.00	48:1
BEVERLY HILLS	51.00	2,400.00	47:1
BEVERLY HILLS	88.00	3,600.00	41:1
LAUREL CANYON/LA	46.00	1,300.00	28:1
LAUREL CANYON/LA	112.00	3,000.00	27:1

[1] Dollar figures have been rounded.

[2] Many vacant lots in Los Angeles County are presently taxed as little as $6.00 because in 1975, the year of their base year value, they were considered undevelopable. Today, by contrast, due to technological or legal changes, the lots are worth hundreds of thousands of dollars, an increase in valuation not subject to property taxation until the property changes ownership. *See* III J.A. 595.
Source: I J.A. 111, 112.

TABLE 5

DISPARITIES IN TAXES PAID BY LONG-TIME AND RECENT OWNERS OF COMPARABLE COMMERCIAL, INDUSTRIAL AND INCOME-PRODUCING PROPERTY IN LOS ANGELES COUNTY

APARTMENTS NEIGHBORHOOD	RATIO[1]
BRENTWOOD	10:1
WEST HOLLYWOOD	9:1
HUNTINGTON PARK	9:1
ARCADIA	9:1
SOUTH GATE	9:1

OFFICE BUILDINGS NEIGHBORHOOD	RATIO
MONROVIA	8:1
SAN PEDRO	8:1
L.A. MID-CITY AREA	7:1
COMMERCE	7:1
COMPTON	7:1

LIGHT INDUSTRIAL NEIGHBORHOOD	RATIO
FLORENCE	11:1
PALMDALE	10:1
WATTS	9:1
EL MONTE	8:1
VAN NUYS	7:1

GARAGES NEIGHBORHOOD	RATIO
COMPTON	10:1
SOUTH LOS ANGELES	8:1
UNIVERSAL CITY	6:1
GLENDALE	6:1
DOWNTOWN LOS ANGELES	6:1

STORE BUILDINGS NEIGHBORHOOD	RATIO
CULVER CITY	11:1
DOWNTOWN LA	10:1
SOUTH GATE	9:1
GLENDALE	8:1
LONG BEACH	7:1

RESTAURANTS NEIGHBORHOOD	RATIO
UNIVERSAL CITY	9:1
INGLEWOOD	8:1
TEMPLE CITY	6:1
STUDIO CITY	6:1
WHITTIER	6:1

[1] The ratio is equal to property tax assessments on property purchased in 1989 compared to tax assessments on comparable properties purchased in 1975.
Source: I J.A. 113,114.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on June 14, 1991, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: original and forty copies)

De Witt W. Clinton
David C. Muir
Albert Ramseyer
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
(Counsel for Respondents)

California Attorney General
Daniel Lungren
3580 Wilshire Boulevard
9th Floor
Los Angeles, CA 90010

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 14, 1991, at Los Angeles, California.

Betty J. Malloy
(Original signed)